

Volume 2

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP

TRANSCRIPT OF PROCEEDINGS

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1 P R O C E E D I N G S

2 FEBRUARY 5, 2018

7:27 A.M.

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4 THE COURT: All right. Please call the case.

5 THE CLERK: Calling Civil Action 17-939, Waymo LLC,
6 versus Uber Technologies, Inc., et al.

7 Counsel, please approach the podium and state your
8 appearances for the record.

9 MR. VERHOEVEN: Good morning, Your Honor. Charles
10 Verhoeven from Quinn Emanuel on behalf of Waymo. With me is my
11 partners David Perlson, David Eiseman, James Judah, Andrea
12 Roberts, Duane Lyons and Jordan Jaffe.

13 We're ready to go, Your Honor.

14 MR. GONZÁLEZ: Good morning, Your Honor. Arturo
15 González, Michael Jacobs, Wendy Ray, Esther Kim Chang from
16 Morrison & Foerster for Uber and Otto.

17 MR. CARMODY: Good morning, Your Honor. Bill Carmody
18 here on behalf of Uber. And with me we have Shawn Rabin at the
19 table and Joe Grinstein as well.

20 MS. DUNN: Good morning, Your Honor. Karen Dunn from
21 Boies Schiller Flexner for Uber and Ottomotto. Michael Brille
22 and Meredith Dearborn and Martha Goodman are here with me.

23 MR. COOPER: Good morning, Your Honor. John Cooper,
24 Special Master.

25 THE COURT: Thank you.

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1 So there's a long line of people who want to get in. If
2 all of you are lawyers, except for Mr. Cooper, you've got to
3 squeeze into that front row if you're lawyers for one side or
4 the other. We have to have room for the members of the public,
5 and you lawyers are taking up too much room. So you don't have
6 to adjust this very minute, but I want you to adjust. This is
7 unconscionable that the law firms would take up this much
8 space. So you lawyers here deal with this problem before -- in
9 just a few minutes.

10 All right, next. The reason the public is not in here now
11 is because you failed me once again and could not agree on
12 something simple. You wanted an ordinary, plain English
13 shorthand version of the alleged trade secrets. Well, you
14 couldn't agree on one of them.

15 Is there anyone here in the courtroom, who, if I blurt
16 this out, that they are going to... I don't know. You lawyers
17 tell me. Is everyone here entitled to know secret information?

18 All right. I'm going to blurt it out.

19 **MR. JAFFE:** Excuse me. Is everyone cleared to see AEO
20 information in here? I don't know if that's the case.

21 (Members of the public exit the courtroom.)

22 (Proceedings held under seal.)

PROCEEDINGS

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14 (Brief pause while courtroom is opened to the public.)

15 **THE COURT:** All right. Welcome back. Please be
16 seated.

17 All right. Welcome, everyone. And since we started the
18 case, we will recall the case now that the public is here.

19 Please call the case.

20 **THE CLERK:** Recalling Civil Action 17-939, Waymo LLC
21 versus Uber Technologies, Inc., et al.

22 Counsel, please restate your appearances for the record.

23 **MR. VERHOEVEN:** Good morning, Your Honor. Charles
24 Verhoeven. And with us is our corporate representative from
25 Waymo, Mr. Demarron Berkley.

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1 We also have the CEO of Waymo in the audience. Please
2 stand up.

3 With me at counsel table, Your Honor, are my partners:
4 Melissa Baily, James Judah, David Eiseman, Andrea Roberts,
5 Duane Lyons, David Perlson, and Jordan Jaffe.

6 We're ready to proceed, Your Honor.

7 **THE COURT:** Thank you.

8 **MR. GONZÁLEZ:** Good morning, Your Honor. Arturo
9 González, Michael Jacobs, Wendy Ray, Esther Kim Chang from
10 Morrison & Foerster.

11 Our client representative is here, Eric Meyhofer. And,
12 also, Tony West, general counsel from Uber.

13 **THE COURT:** Thank you.

14 **MR. CARMODY:** Good morning, Your Honor. Bill Carmody
15 here with Susman Godfrey. We have with us here Shawn Rabin at
16 the table and Joe Grinstein as well.

17 **MS. DUNN:** Good morning. Karen Dunn from Boies
18 Schiller Flexner. At counsel table is Michael Brille. And in
19 the back, Meredith Dearborn and Martha Goodman.

20 **THE COURT:** Welcome to all of you.

21 So we're here for the start of our trial. We're waiting
22 on, I think, three members of the jury to arrive. Seven have
23 arrived. I have some items to bring up with you.

24 With respect to the structure of the trial, I had asked
25 you to agree, if you could, on how we will deal with reasonable

PROCEEDINGS

1 royalty. And I read your statement over the weekend.

2 Does anyone want to say something beyond what's in their
3 statement?

4 **MR. EISEMAN:** Not from Waymo, Your Honor.

5 **MR. CARMODY:** We're fine as well, Your Honor. Thank
6 you.

7 **THE COURT:** All right. Then the answer will be this.
8 You have 16 hours of evidence time. You have to put in
9 whatever evidence you're going to put in on reasonable royalty
10 in that 16 hours.

11 There is a small chance, but some chance -- I don't want
12 to say small. There is a chance that I will bifurcate the
13 argument on that so as not to over -- what's the word I'm
14 looking for? -- overwhelm the jury instructions.

15 But since you all have not been able to agree on it, I may
16 just roll the reasonable royalty into the jury instructions.
17 And that's what Waymo wants. You may live to regret having
18 overwhelmed the jury instructions in that manner, but if
19 that's -- I can't get you lawyers to agree on much.

20 So, anyway, I'm not going to make a final ruling on
21 bifurcating the argument, but the evidence will not be
22 bifurcated. You've got to roll that into your 16 hours. All
23 right?

24 **MR. EISEMAN:** Thank you, Your Honor.

25 **THE COURT:** Thank you. Okay.

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1 Thank you for your list of the top 20 evidentiary rulings.
2 That will be very useful to me.

3 Here is another item. When I came in this morning, I took
4 a look at the way you had reorganized my courtroom and I --
5 some things I did not quite like. I'll just mention them.

6 There is a rat's nest of wiring that -- that white
7 cabling. I don't like the way you have the white cabling set
8 up. It intrudes into the jury box. We'll leave it as it is
9 for today, but you've got to deal with that this afternoon and
10 get rid of it.

11 Also, when I came in, that little table was right up
12 against the jury box so that Mr. Verhoeven could lean into the
13 jury box. I'm sure that was the IT people, not you, but you
14 can't do that. You've got to have it -- you've got to respect
15 the jury and not get that close to them. Where you have it now
16 is fine. You could even be a little closer than where you
17 moved it to. That would be fine. But not as close as it was
18 indicated.

19 Also when I arrived, you had chairs protruding into the
20 well of the courtroom for yet one more member of your trial
21 team. You've got nine there now; I guess you wanted ten. It
22 was just too much, so I removed that one extra chair because
23 the well of the courtroom needs -- cannot be that cluttered.
24 So you have to -- nine lawyers per side is the -- is the world
25 record for my courtroom anyway. So you'll just have to live

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1 with nine and the others will be on the front row.

2 Thank you for the timeline. We're going to print out
3 small copies of it and hand it out to the jury. Does everybody
4 agree with that? So they can make their own notes on it. Any
5 problem with that?

6 **MR. VERHOEVEN:** No, Your Honor.

7 **MR. GONZÁLEZ:** That's fine, Your Honor.

8 **THE COURT:** Okay. Thank you.

9 I don't know. I won't name any names, but somebody has a
10 witness who thinks he's important and wanted a private room.
11 No. Sorry. This is -- they are going to have to be just like
12 the rest of us. And the public doesn't get a private room;
13 neither does that witness. And neither of your side is going
14 to get a private room just because they're famous.

15 Okay. Now we have a -- what you would call a housekeeping
16 matter, which concerns trying to load too much of a burden upon
17 my Courtroom Deputy. And this concerns an email from someone
18 named Michelle Yang.

19 Is she here?

20 **MS. YANG:** Yes, Your Honor.

21 **THE COURT:** So, anyway, thank you for your email, but
22 what your email tends to do is put the burden of trying to
23 figure out when something should not be shown to the public or
24 to the jury or -- on my Deputy Courtroom Clerk. That's not
25 going to work. She's got a million other things going on.

1 So I'm relying on the lawyers to jump up and tell me.

2 Otherwise, the public may see your trade secrets, may see how
3 your -- on the Uber side, how your trade secrets work.

4 So you just have to help us with this, but it's not good
5 enough to send us a protective "it's all your fault" type of
6 email saying "if these things" -- no. We're not going to do
7 that for you. You have to jump up and protect the record at
8 the appropriate time.

9 All right. Then I think there was a -- yes, your list of
10 key individuals. Thank you. But it needs to have another
11 column for what their role in the case is. Like, "CEO of
12 Uber." That would be good, or something that will explain the
13 role in the case. So I'm going to -- we're not going to hand
14 this one out until you all fix it. I'm going to give you
15 another day to fix that one.

16 I have this question for you. Ottomotto, who is the
17 corporate representative for Ottomotto here?

18 (Mr. Meyhofer raises his hand.)

19 **THE COURT:** Who is that?

20 **MR. CARMODY:** It's Eric Meyhofer, Your Honor. He's
21 the same corporate representative for both defendants.

22 **THE COURT:** Is Ottomotto a separate company? What is
23 the relationship now, strictly speaking, between Uber and
24 Ottomotto, LLC? No hemming and hawing. I want an exact
25 answer.

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1 **MR. CARMODY:** The short answer is, Your Honor, I don't
2 know right now. Obviously, Uber acquired it. I believe it was
3 a stock purchase. So probably it's part of Uber, but I don't
4 know.

5 Karen, did you know?

6 **THE COURT:** How can you not know that at this point?
7 Please give me a --

8 **MS. DUNN:** So Ottomotto is indirectly wholly owned by
9 Uber. And what that means is it's owned by a holding company,
10 but they don't have their -- it's not a separate entity that
11 would have a representative.

12 **THE COURT:** Let's say the jury decides that there is a
13 billion-dollar verdict against Ottomotto but not against Uber.
14 Is Uber going to pay that?

15 **MS. DUNN:** Yes.

16 **THE COURT:** So Uber is good for whatever Ottomotto
17 gets hit on?

18 **MS. DUNN:** Yes.

19 **THE COURT:** All right.

20 **MS. DUNN:** We hope that won't happen, Your Honor, but
21 your analysis is correct.

22 **THE COURT:** All right. So then Ottomotto corporate
23 representative is, again, who?

24 **MR. CARMODY:** Eric Meyhofer, Your Honor.

25 **THE COURT:** Very good.

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1 So when the jury comes in, and in your opening statements,
2 please explain that Ottomotto, LLC is in the case and he is the
3 corporate representative for both, because it's -- we can't
4 leave the jury in the dark as to who Ottomotto is. All right?

5 Thank you for your -- I think I already thanked you for
6 your top 20 list.

7 All right. One of you filed an objection to the opening
8 statement by the other side.

9 Mr. Carmody, you told me last week that you two lawyers
10 were excellent lawyers and that you would not be making
11 objections to each other's opening statements. And then, of
12 course, right over the weekend I get an email -- not an email,
13 but a filing by Uber saying that you do have an objection.

14 **MR. GONZÁLEZ:** Your Honor, to clarify. The objection
15 is not necessarily to the opening statement. These are
16 exhibits that they have identified for the first few witnesses
17 of the trial. Now, it's conceivable they may want to also use
18 it in opening. I don't know. And we did reserve our
19 objections to argument.

20 But having said that, if you're talking about the videos
21 issue, Your Honor --

22 **THE COURT:** Yeah, that's what I'm -- that's what you
23 sent up.

24 **MR. GONZÁLEZ:** That's right. But just to be clear,
25 our concern is with respect to marketing materials in general,

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1 and the videos are examples of that. They've got a number of
2 videos that they've identified as potential trial exhibits with
3 the first few witnesses. And they have one document in
4 particular that is just your classic marketing document that
5 talks about why they have driverless cars and how great they
6 are.

7 And it's our view that's not the issue for this jury. And
8 so neither side should be introducing videos or marketing
9 documents to talk about how great their companies are.

10 **MR. VERHOEVEN:** Your Honor, may I respond?

11 **THE COURT:** Yes, please.

12 **MR. VERHOEVEN:** Late, last night we got an email from
13 an attorney at Morrison & Foerster reneging on the agreement
14 that Mr. Carmody and I had and saying they would object to the
15 use of some exhibits that were videos if we were to use them in
16 our opening and asking us to disclose that information, both
17 which were in conflict with the personal agreement that we put
18 on the record between myself and Mr. Carmody.

19 **MR. CARMODY:** Your Honor, let me jump in. Listen, I
20 don't care about the opening, what he does. We're talking
21 about witnesses. Just as a point of clarification, we're not
22 reneging on anything.

23 **THE COURT:** So if he wants to show these videos in his
24 opening, that's --

25 **MR. CARMODY:** I say go for it.

1 **THE COURT:** Well, then I'm not going to -- what do you
2 say to that, Mr. González?

3 **MR. GONZÁLEZ:** What I say to that, Your Honor, is that
4 what we said when we made the agreement is that we're not
5 waiving any objections to whatever they might want to say in
6 opening. So, in other words, you use something at your own
7 risk that it may not come into evidence.

8 So my issue is the first couple of witnesses they have, as
9 exhibits that they want to bring into evidence, videos and
10 these marketing documents. That's our concern.

11 I'm talking about the evidence that the jury is going to
12 see, not about whatever they might do in opening.

13 **THE COURT:** All right. Look, are you going to show
14 these in your opening?

15 **MR. VERHOEVEN:** Two very, very short clips that I'm
16 going to show in my opening to give the jury an idea of what a
17 self-driving vehicle is and to give the jury an idea of what a
18 point cloud is, which is what the car sees with LiDAR, Your
19 Honor. And there is absolutely nothing wrong with them. And
20 we also think there's nothing wrong with having witnesses who
21 know what they are put them into evidence.

22 But I don't know why we're talking about my opening
23 statement when we already had an agreement. This is -- I feel
24 like I'm negotiating with two different people who have two
25 different positions here.

1 **MR. GONZÁLEZ:** I'm not talking about the opening at
2 all. I'm talking about the evidence through witnesses.

3 **THE COURT:** This is what's known as Soviet style
4 negotiation. What's mine is mine, and what's yours is
5 negotiable.

6 Here's what we're going to do. You show whatever you want
7 in your opening. That doesn't mean it comes into evidence
8 later.

9 **MR. VERHOEVEN:** Yes, sir.

10 **THE COURT:** It may or may not. The benefit of it is
11 at least I get to see and decide for myself if it's too
12 prejudicial.

13 But Mr. Carmody agreed. He's standing by his word. So
14 thank you for being an honorable lawyer, Mr. Carmody.

15 I'm not saying that Mr. González is not, but I'm just
16 saying that for the opening statement, thank you for solving
17 this problem.

18 All right.

19 **MR. GONZÁLEZ:** Your Honor, the reason we raised it is
20 because when this comes up with a witness in the chair, it
21 won't be as easy as just show it to me, Judge Alsup, so that
22 the jury can't see it, because it has sound. So I'm just
23 wondering logically.

24 **THE COURT:** He's going to play the sound too, I
25 assume.

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1 Are you going to play the sound in your opening?

2 **MR. VERHOEVEN:** Yes.

3 **MR. GONZÁLEZ:** My point is that there are videos that
4 will not be used in opening, and I'm just wondering how Your
5 Honor would like to handle objections to those. How can we get
6 you to see them without the jury seeing or hearing them?

7 That's the issue that I'm raising.

8 **THE COURT:** Possibly I will look at them on my
9 computer, I guess. Why don't you put them on a disk and let me
10 look at them on my computer so that I can -- I'll just do it
11 myself, and then I'll tell you the answer. That's the best I
12 can do.

13 **MR. GONZÁLEZ:** Thank you, Your Honor.

14 **THE COURT:** All right. So are we ready to proceed and
15 bring in the jury?

16 **MR. VERHOEVEN:** Your Honor, I'd like to have a second
17 to set up. I'm going to move the lectern and -- may I do that?

18 **THE COURT:** Yeah, go ahead. Start right now.

19 **MR. GONZÁLEZ:** Your Honor, while he's doing that --

20 **THE COURT:** I'm going to give them preliminary
21 instructions. It will take five minutes, but, very quickly
22 we'll be into the opening statement.

23 Yes, Mr. González.

24 **MR. GONZÁLEZ:** So I don't want to slow things down,
25 but I want to note this for the record.

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1 We had an in limine motion that dealt with witnesses who
2 are not disclosed. And you indicated that we would take those
3 one at a time, and you would weigh a number of factors in terms
4 of deciding whether or not they get to call that witness and
5 what the witness can say.

6 The very first witness that they want to call is the CEO
7 of Waymo, who was not disclosed in their Rule 26 originally.
8 He was not disclosed in the supplemental Rule 26. They just
9 disclosed him a couple weeks ago. So I've asked them, are they
10 at least willing to limit the scope of his testimony to what he
11 said in deposition, and they haven't even agreed to that.

12 So I just want to note for the record -- right at the
13 outset, I just want to know what your rules are going to be.
14 They've got the CEO coming in who wasn't disclosed at all until
15 a couple weeks ago, and it's unclear to me what he's even going
16 to say.

17 **THE COURT:** Just a minute.

18 Do we have the jury here?

19 **THE CLERK:** We're missing one.

20 **THE COURT:** All right.

21 What do you say to that?

22 **MS. ROBERTS:** Your Honor, so Mr. Krafcik appeared on
23 our trial witness list in September. You'll recall this is our
24 third time trying to go to trial. So our witness list has been
25 the same with the exception of the new areas of discovery that

1 we went into with the Stroz report and the Jacobs letter.

2 So he has been on our witness list since September. He
3 has been on Uber's initial disclosures since April 3rd, their
4 very first one. He was on their initial disclosures on
5 June 21st. They identified him as a top 10 witness to depose
6 on June 22nd. They deposed him in early August.

7 And the subject matter of the testimony that he's going to
8 provide, which is disclosed in our trial witness list provided
9 back in September, overlaps significantly with the subject
10 matter that they disclosed in their June 21st initial
11 disclosures.

12 So there's no surprise here, no prejudice, no harm.
13 They've deposed him.

14 **THE COURT:** Is all that true?

15 **MR. GONZÁLEZ:** Well, Your Honor, part of it is. What
16 still isn't clear to me, they're not willing to commit that his
17 testimony is going to be within the four corners of his
18 deposition. So if the rule is going to be that he can come in
19 and say things that are not in his deposition, then I think
20 that ought to apply both ways.

21 **THE COURT:** Well, you could have asked that question
22 in a deposition, but maybe you -- maybe you decided not to.
23 It's hard for me to -- you had the chance in the deposition to
24 ask whatever you wanted; right?

25 **MR. GONZÁLEZ:** Well, Yes, Your Honor, but the

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1 deposition came before he was designated as a trial witness.
2 And you understand the difference. You take a deposition, you
3 ask questions. Well, if we had known that he was going to be a
4 trial witness on A, B, C, and D, we obviously would have
5 inquired.

6 So all I'm -- I'm just -- I know that there's a lot on
7 your plate, Your Honor, and we don't want to burden you. I
8 just want to note this for the record right out of the gate so
9 that, when it's our turn to put on our case, they don't start
10 making technical objections. This is the guy --

11 **THE COURT:** I'm going to give you the same slack they
12 are getting.

13 **MR. GONZÁLEZ:** Thank you, Your Honor.

14 **THE COURT:** They are getting away with a little bit
15 here, but it's not a huge amount.

16 Mr. Carmody, did you want to say something?

17 **MR. CARMODY:** I've got the point, Your Honor.

18 **THE COURT:** What is it?

19 **MR. CARMODY:** So this is a witness who -- she's
20 right -- is on our witness list. We may go a little bit
21 outside the scope of their examination. Not knowing what they
22 are going to ask him, I don't know. I would just suggest to
23 the Court that we get a little bit of leeway there so that we
24 don't have to recall him.

25 **THE COURT:** I don't know until we get there. I may or

1 may not allow you to interrupt the flow of the plaintiff's
2 case. You can always call him back.

3 **MR. GONZÁLEZ:** Understood.

4 **THE COURT:** You can always call him back. And even if
5 -- even if this is Mr. Big of All Time, he will be at your beck
6 and call and have to cancel all trips to Asia and everywhere
7 else he planned to go so that he can be at your beck and call
8 if they don't want to allow you to exceed the scope of the
9 direct.

10 **MR. GONZÁLEZ:** Thank you, Your Honor. We'll take it
11 one question at a time.

12 **THE COURT:** Bring in the jury, please.

13 **MR. JACOBS:** Your Honor.

14 **THE COURT:** Wait a minute. It's 8:00 o'clock,
15 Mr. Jacobs.

16 **MR. JACOBS:** I know.

17 **MR. VERHOEVEN:** Can we have a quick sidebar, Your
18 Honor? It's important.

19 (Sealed proceedings held at side bar.)

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3 (Proceedings held in open court.)

4 THE COURT: All right. We're ready.

5 THE CLERK: All rise for the jury.

6 (Jury enters the courtroom at 8:02 a.m.)

7 THE COURT: Why don't you scoot down?

8 All right. Welcome, everyone. Everyone be seated,
9 please.

10 Welcome, members of the jury. Thank you for being on
11 time. We're going to get started with the opening statements
12 in just a moment. First, we'll start things off the proper way
13 and the Clerk will now call the case and counsel will please
14 make their appearances.

15 THE CLERK: Calling Civil Action 17-939, Waymo LLC
16 versus Uber Technologies, Inc., et al.

17 Counsel, please state your appearances for the record.

18 MR. VERHOEVEN: Good morning, Your Honor. Good
19 morning, members of the jury. My name is Charles Verhoeven.
20 And with us here at counsel table is Demarron Berkley -- he is
21 our corporate representative of my client, Waymo -- and my
22 partners Melissa Baily, Jordan Jaffe, David Perlson, Duane
23 Lyons, Andrea Roberts, David Eiseman and James Judah.

24 THE COURT: All right. Thank you on the Waymo side.

25 All right. On the Uber/Ottomotto side, Mr. Carmody.

PRELIMINARY JURY INSTRUCTIONS

1 **MR. CARMODY:** Good morning, everybody. I'm Bill
2 Carmody with the law firm Susman Godfrey. I'm here on behalf
3 of Uber, and I have a few other Susman Godfrey lawyers.

4 I have Shawn Rabin and Joe Grinstein here, Arturo
5 González. We have Karen Dunn, Michael Brille. The corporate
6 representative for both the defendants in this case of Uber and
7 Ottomotto is Eric Meyhofer. We have Michael Jacobs. We have,
8 on behalf of Uber, Nicole Bartow.

9 Thanks, everyone.

10 **THE COURT:** All right. Okay. Ready to get started
11 over there? Good. You've got your notepads.

12 So let me give you two minutes of preliminary
13 instructions, and then we're going to go straight to the
14 opening statements.

15 PRELIMINARY JURY INSTRUCTIONS

16 **THE COURT:** At the end of the case, it's going to be
17 your job to decide what the correct verdict is; who wins, who
18 loses. That will be your job. My job will be to give you the
19 instructions of law that apply. I will do that at the end, and
20 I may do some of that even sooner, but for present purposes,
21 the lawyers will explain some of the elements of the proof.

22 But at the end of the case, it's like a scorecard. You
23 line up the elements of proof that are required. Then you line
24 up the things that you think have or have not been proven and
25 you see whether or not those elements of proof have been met.

PRELIMINARY JURY INSTRUCTIONS

1 If the elements of proof have been met, then you must rule for
2 the party that has proven their case, which in this case would
3 be the plaintiff.

4 On the other hand, if the plaintiff has fallen short on
5 even one element of proof, then you have to rule for the other
6 side. That's the way it works.

7 So I'll give you detailed instructions on that later on,
8 but your job is to be very careful to pay attention to the
9 evidence. Sometimes you're going to have to decide who's more
10 correct; whether the light really was red or whether the light
11 really was green, that kind of a thing.

12 So you have to do witness credibility. You have to
13 decide -- maybe both sides have good, credible cases and you
14 have to decide which one is the more persuasive. It's up to
15 you. But you have to pay close attention. It's like the
16 laboratory experiment that I referred to during our -- during
17 our jury selection process.

18 Now, because -- because you decide the case based on what
19 is the evidence presented here in the courtroom -- evidence --
20 I need to tell you again you must not go online and try to look
21 anything up about the case or read newspaper stories about the
22 case or magazine stories about the case. You can do all that
23 later after the case is over; but for present purposes, no, you
24 cannot do that. That would be wrong because that might
25 influence how you see the case when you're supposed to be

PRELIMINARY JURY INSTRUCTIONS

1 presenting -- deciding it based on what's presented here.

2 The great thing about a trial is you sit back and see what
3 the lawyers present to you as evidence and then base your
4 verdict on that. So no going on Facebook and telling people
5 you're on the jury or any of those other social media things.
6 No telling your friends. Just maybe your loved ones. You can
7 say, "I'm on the Waymo v. Uber case." That's okay. But don't
8 let them talk to you about the case.

9 All right. Now, for opening statement purposes and, in
10 fact, for the entire trial I want to repeat one thing that I
11 said during the jury selection. This is a cardinal rule, a
12 cardinal rule. Not one word a lawyer ever says is evidence.
13 You've got nine lawyers at each table. Not one word they ever
14 say is evidence unless I tell you specifically you may consider
15 it as evidence.

16 There will be a few exceptions. Like, when they read
17 deposition testimony in, I'll tell you that's evidence. But
18 when they give their opening statements and their closing
19 arguments and when they are asking questions of a witness, it
20 is not evidence.

21 It's what the -- the evidence is what the witness says.
22 That's evidence. So if a lawyer were to ask a witness, "Isn't
23 it true the light was red?" and the witness says, "I don't
24 know" or "I don't remember," all that proves is the evidence
25 part is -- the witness doesn't remember.

PRELIMINARY JURY INSTRUCTIONS

1 Don't get confused by that and get back into the jury room
2 and say somebody out there said the light was red. I remember
3 it. Somebody said the light was red. The rest of you have to
4 be able to say, "Oh, no, no. That was just the lawyer talking.
5 Just the lawyer talking." That's zero, z-e-r-o, evidence.

6 It doesn't count for anything in terms of evidence. It
7 counts for a lot for the opening statements and the closings,
8 but this is the single biggest way a jury can go wrong, is to
9 get confused by what the lawyers say versus what the evidence
10 says. So I make -- I make a strong point of this. So as the
11 case goes through, you keep that distinction in mind.

12 It's up to you whether you take notes or not. I'll just
13 leave it to your own judgment. These are for your own private
14 use and not to share with each other.

15 So now we're going to have the opening statements. Each
16 side has about 70 minutes to present their opening statement.
17 And these are -- you're so lucky to be in a case with these
18 lawyers. These are outstanding -- some of the best lawyers in
19 the United States are in this -- are at these two tables right
20 now, and you're going to get a chance to see them perform, and
21 they will do an excellent job. Remember, though, that not one
22 word they say is evidence.

23 (Laughter.)

24 **THE COURT:** Mr. Verhoeven, at this time you may make
25 the opening statement on behalf of Waymo. The floor is yours.

OPENING STATEMENT / VERHOEVEN

1 **MR. VERHOEVEN:** Thank you, Your Honor.

2 **OPENING STATEMENT**

3 **MR. VERHOEVEN:** Good morning again, members of the
4 jury. Let me start by again thanking you for coming in this
5 morning and for serving, doing your civic duty here. It's very
6 much appreciated by everyone here.

7 Let me start by just giving you a general description of
8 this case. This case is about two competitors where one of the
9 competitors decided that they needed to win at all costs; that
10 losing was not an option; that they would do anything that they
11 needed to do to win no matter what. No matter if it meant
12 breaking some rules. No matter if it meant doing the wrong
13 thing. And in this case no matter if it meant taking trade
14 secrets from the competitor.

15 This case concerns driverless car technology, as you
16 probably heard from the voir dire we did, and there is a
17 technological race going on right now.

18 My client, Waymo, used to be part of Google and just
19 recently became Waymo. And back when it was Google in 2009, it
20 started developing what is called a moonshot. And some
21 engineers decided, hey, wouldn't it be cool if we could develop
22 self-driving cars? Wouldn't it be great for everybody? And
23 what the evidence will show is that, when other people found
24 out about it, they kind of laughed at us because no one thought
25 that was even possible.

1 But Google put in years and years and years of effort,
2 testing, driving hundreds and hundreds of thousands of miles,
3 learning from what they did, and got themselves to a place in
4 around 2014, '15 where people in the industry started saying,
5 "Wait a minute. They are going to do it. This is feasible."
6 And that's when the race started happening.

7 Today every car company in the world is trying to develop
8 self-driving car technology. There is a big competition, and
9 Google is in the lead. Google is now Waymo. A several-year
10 lead because it was the one that developed it in the first
11 place.

12 This case is about the defendant Uber making a decision
13 that it had to develop this technology in order for its
14 business model to survive. It's about a company that decided
15 if it didn't develop this technology, it would go out of
16 business. And so the CEO of Uber, Mr. Travis Kalanick, made a
17 decision to invest heavily in it.

18 And at first Uber did it the right way. They went and
19 they hired engineers from a university, Carnegie Mellon
20 University. They set up the research department to try and
21 develop this technology. But they couldn't catch up. By
22 playing fair, it wasn't working because Google is way too far
23 ahead.

24 What the evidence is going to show in this case is
25 Mr. Kalanick, the CEO at the time of Uber, made a decision that

1 winning was more important than obeying the law. He made a
2 decision to cheat. Because for him, winning at all costs, no
3 matter what, was his culture and was what he was going to do.

4 The evidence is going to show that he targeted and hired
5 away from Waymo one of its key engineers who had been with the
6 Chauffeur Development Program -- that's the name of the Google
7 program -- since its inception. And this is an engineer that
8 had a lot of experience in developing customized technology
9 called LiDAR.

10 And I'll explain what that is in a little bit, but LiDAR
11 is a technology -- if you've ever seen a self-driving car
12 that's got that spinning thing on the top, that's the LiDAR.
13 And that's what allows the car to see. It's critical. It's
14 the eyes of the car. And Uber didn't have it and Uber couldn't
15 figure out how to do it.

16 And so the evidence is going to show that Mr. Kalanick and
17 his team engaged in a plan that they kept secret to induce
18 Mr. Levandowski to come over, pay him millions of dollars tied
19 specifically to whether or not he actually developed this
20 technology in a very short time frame, and caused him to come
21 over and copy the technology they had already developed for
22 Waymo.

23 You'll see documents as I continue, their own words,
24 internal documents from Uber where they -- the CEO of the
25 company says, "We want to find cheat codes." Now, I didn't

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1 know what cheat codes was because I'm too old, but I understand
2 that when you play video games, a cheat code is something that
3 allows you to skip what you need to do to get to the next
4 level.

5 Well, that's the CEO of the company saying, "We want to
6 use Levandowski to find these cheat codes." In their own
7 words, written documents, Mr. Kalanick said he wanted to use
8 Levandowski to leapfrog Google.

9 This case, it reminds me of a story I read -- and I'm
10 showing my age here -- in the '80s about a woman named Rosie
11 Ruiz. I don't know if you've ever heard of her, but Rosie Ruiz
12 wanted -- really wanted to win the Boston Marathon, but she
13 wasn't really that good. But she really wanted to win at all
14 costs, and so she decided to cheat.

15 And Rosie Ruiz started running the marathon, then jumped
16 on the subway, and then jumped off the subway toward the end of
17 the marathon and ran in and won the marathon. She cheated.
18 She took a shortcut. Well, they found out about that and she
19 didn't win the marathon after all.

20 And that's why we're here today. We're bringing this case
21 because Uber is cheating. They took our technology in an
22 effort to win this race at all costs, and that constitutes
23 misappropriation of our trade secrets, and it's wrong, and it's
24 something we're here to rectify.

25 Now, I have a series of slides here that will show up on

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1 your screens up here. And I'd like to start with a more
2 detailed presentation by describing to you a little bit about
3 my client, Google and Waymo.

4 Can we turn on the --

5 **THE COURT:** Just make sure. Is it showing up in the
6 jury box?

7 (Jury panel nodding affirmatively.)

8 **THE COURT:** All right. Jury says yes.

9 **MR. VERHOEVEN:** Not showing up on ours.

10 **THE COURT:** Nor mine.

11 (Document displayed)

12 **MR. VERHOEVEN:** There it goes. Thank you, Mr. Fisher.
13 My clicker is not working, Mr. Fisher, so that's not good.
14 Can we go to the next slide? One more.

15 (Document displayed)

16 **MR. VERHOEVEN:** Let me start by talking about Google.
17 I'm sure you've all heard of Google. Google is a classic
18 Silicon Valley story. It was started in a garage.

19 This is a picture of the two founders of Google, Larry
20 Page and Sergey Brin, in the garage. It was Susan Wojcinski's
21 garage. She's also part of Google now. But it's a classic
22 entrepreneurial story. They came up with this great idea for a
23 search algorithm, and the rest is history.

24 Today we know Google for a lot of its products. We have
25 Google Search. We have Google Maps. We have email called

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1 Gmail. YouTube. My kids live on YouTube. All these services
2 are free. All these services make us all have a better life.

3 So the plaintiff in this case is called Waymo. Waymo
4 is -- used to be part of what was Google's -- it's called
5 Google X, where they did their moonshots, where they did their
6 things that maybe it would work, maybe it wouldn't work, but
7 they really wanted to try it. And so Waymo started out as a
8 program called the Chauffeur Program. And then recently it was
9 created as a subsidiary because it started getting beyond
10 research and into application, and now it's called Waymo.

11 As I explained, the Waymo project, or the Chauffeur
12 Project, started in 2009, and there has been a ton of work
13 that's gone into it.

14 Now, as you can see, this is a picture of the current
15 Waymo car. It's a self-driving car, Chrysler Pacifica. Waymo
16 is currently operating this car in the Bay Area, in Phoenix.
17 Also tested it in Austin, Texas; Kirkland, Washington.

18 Waymo has instituted what it calls an Early Rider Program
19 in Phoenix where a person -- a member of the public can order
20 one of these, and it comes, and they can get in. And in this
21 particular one there is a driver in the car just for safety,
22 but the car drives itself. And there has been a more recent
23 program where members of the public can order a car that has no
24 driver in it and it just drives by itself. It's fascinating.

25 As I said, Waymo is ahead of the pack because they started

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1 a long time ago.

2 Here is a video, just to give you a sense of how this
3 technology works.

4 (Videotape played in open court, not reported.)

5 **MR. VERHOEVEN:** These are three cars. You see them on
6 the left. Those are the passengers on the right, and there is
7 nobody driving the cars.

8 In the first car you can see there is no one there. It's
9 driving itself. If you look to the right, you see the map.
10 You see -- that's what you see on the screen of the car.

11 This is the second car. And this is the third car.
12 Again, nobody is driving. Folks are sitting in the back seat.
13 It works perfectly.

14 So this is truly revolutionary technology. And it's going
15 to have a lot of benefits for everyone, everyone in the world
16 once it becomes normalized and used by everyone. It's going to
17 -- and the evidence will show this. It's going to improve
18 safety. Very important. Tens of thousands of people just in
19 this country die every year in car wrecks. Believe it or not,
20 these cars work better than humans work them. And so that will
21 decrease the number of accidents dramatically and save
22 thousands and thousands of lives.

23 There will be less traffic congestion. You know how
24 terrible it is to drive around here. And you get these people
25 who don't know how to drive and they cut in and they cut out

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1 and they tailgate, and it causes all these traffic jams. Well,
2 these cars would be set up to drive perfectly and so they won't
3 do those kind of things.

4 And there will be less traffic jams and there will be less
5 cars on the road because people can just order one of these
6 things and it will come, pick them up, and take them wherever
7 they need to go.

8 That will provide new mobility options. Say, you've got
9 some high school kids and you're too busy to take them to
10 school one morning. You could just take one -- order one of
11 these cars. It comes. Takes them, takes them to school. It
12 will free you up. You don't need another person to help you
13 out.

14 This is also true for people with disabilities or elderly
15 people, who in the past would have to call their daughter or
16 son or somebody to help them go to the grocery store or get one
17 place to another.

18 There's just literally hundreds and hundreds of
19 applications that this new technology has that will benefit
20 folks all over the world.

21 Now, this case is about a specific aspect of this
22 technology. It's called LiDAR, and that stands for Light
23 Imaging Detection and Ranging. This is a picture of one of
24 Waymo's custom-made LiDARs. This is the thing that's inside
25 the little bubble on the top of those driverless cars.

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1 And what this thing does is it spins around really fast
2 and it shoots out thousands and thousands of points of infrared
3 lasers. And what happens is these lasers go out, bounce off
4 the objects all around them and come back in. And these
5 devices then record what -- what the reflection is and are able
6 to establish a 3-D world that the computers in the cars can
7 actually see, just like you can see with your own eyes, except
8 it's 360 degrees all the time.

9 To give you an idea of this, I'm going to show you what's
10 called a point cloud. And this is basically what the car sees
11 when it has this -- this LiDAR working.

12 So there you see -- that's actually what -- that's the
13 reflection that comes back from these millions of lasers going
14 out, spinning around all the time. The reflection comes back
15 and that's what the car sees right there. So it's pretty cool.

16 So LiDAR is really, really important for driverless cars
17 because it's the eyes. It's like if you -- if you needed to
18 drive a car and you didn't have vision, you wouldn't be able to
19 drive the car. And it's the same thing with driverless cars.
20 The LiDAR is the thing that gives it the vision so that it can
21 drive safely.

22 This case involves, as I said at the beginning, an
23 engineer that worked at Waymo's and Chauffeur's Driverless Car
24 Program. His name is Anthony Levandowski. He's on the right
25 there in that picture, and he has been with -- he was with the

1 Chauffeur Program from the inception, and his focus was on
2 making these custom LiDARs.

3 And the evidence will show that over the years, as Google
4 kept doing these miles and trying different scenarios and
5 learning what worked and didn't work, Mr. Levandowski developed
6 multiple of these custom LiDAR systems that were refined and
7 more refined and more refined, and went from being way too
8 expensive for a car to being cost efficient. You could
9 actually put it on a car and it would be the right price, that
10 people could actually buy it if they wanted it. And basically
11 moving the technology from something in a laboratory to
12 something that you could mass produce and put on a car.

13 Now, let me talk about the defendant in this case, Uber.
14 Uber is a very different company. Uber was founded by Travis
15 Kalanick and another fellow, Garrett Camp, in 2009.
16 Mr. Kalanick was the CEO of Uber beginning in 2010 until about
17 June 2017.

18 Most of you are probably familiar with Uber, too. Uber
19 offers a mobile application that you can put on your phone and
20 you can use it to order a car. And it -- you can -- you put
21 your credit card in there and that takes care of it. You don't
22 have to get your cash out and pay, and a lot of people like
23 that. I call it ride-sharing technology.

24 Google's technology involves using human drivers. But in
25 around 2014 Mr. Kalanick, the CEO of Uber, made a determination

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1 that Uber needed to develop its own driverless car technology.
2 And here is a transcript from an interview he gave to
3 Bloomberg. "TK" is Travis Kalanick.

4 "At a high level, Uber is racing towards the
5 future, doing everything we can to catch up to Google
6 on autonomy. Self-driving, when applied to ride
7 sharing, is the future."

8 And he continues that:

9 "If Uber is not there, we will be out of
10 business."

11 So he made a decision, we're going to be out of business
12 unless we develop this technology for ourselves.

13 And so, as I said, he went out and he hired some folks
14 from Carnegie Mellon and set up a development project in
15 Pittsburgh.

16 This is a picture of John Bares. He was the founder and
17 head of this development project. It was called Autonomous
18 Vehicle Center for Uber. His boss is Brian McClendon. That's
19 the BAM there.

20 As you can see, they had a lot of problems trying to catch
21 up. And Mr. Bares, these are his notes.

22 In September of 2015:

23 "Rush to laser. Team really strained on trying
24 to figure out best sensor."

25 And he writes:

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1 " My strain, personal strain, increasing pressure
2 to catch up seven years and deploy 100,000 cars in
3 2020. "

4 Uber was simply unable, playing fair, to close this gap so
5 that it might be able to catch up to Google.

6 Here is another -- this is an email to Mr. Kalanick. And
7 in this email -- this is an Uber document. Jeff Holden, an
8 executive at Uber, says:

9 "We started from a huge gap with Google, and I
10 think we've all been sobered by how hard it is to
11 close that gap, even with exceptional effort."

12 And then he recommends:

13 "We should double down on laser."

14 That's the LiDAR technology that I was telling you about.

15 So what happened is, the evidence will show, Mr. Kalanick
16 determined we're not going to cut it. We're not going to make
17 it by playing fair. And he made a decision. And his decision
18 was to cheat. He decided to take the subway.

19 And the evidence is going to show a trail, which I'm going
20 to go through here, of knowing effort to induce Mr. Levandowski
21 from Waymo, to take the trade secret technology he had already
22 developed at Waymo for these custom LiDARs, and bring it and
23 copy it at Uber. And the story starts here.

24 This is an interview summary from Mr. Levandowski in which
25 he told the interviewer that in October 2015 Mr. Kalanick

1 contacted him directly. And I've highlighted a portion of
2 this.

3 "Levandowski and Ron" -- Ron is a fellow by the name of
4 Lior Ron, and he ended up being Levandowski's partner in
5 leaving Waymo and starting up with Uber.

6 So Levandowski and Ron went to Uber after this meeting and
7 discussed selling a nonexistent company. Selling a nonexistent
8 company, that doesn't make any sense.

9 At this time Mr. Levandowski and Mr. Ron were Waymo Google
10 employees. So they went over to Uber and they started saying,
11 "Hey, what if we" -- Uber said to them, "Hey, what if you set
12 up a company and we paid you a bunch of money to come develop
13 this LiDAR technology?"

14 And Mr. Levandowski said it was at this point that he
15 first seriously considered leaving Uber.

16 The evidence shows that right after that, there's a
17 pattern in which the -- these two individuals started covering
18 their tracks. And we've redacted out some personal information
19 from these texts, which you can see. In November
20 Mr. Levandowski is instructing people to delete:

21 "Please delete these texts after use."

22 And Mr. Ron says:

23 "Deleted. Good call."

24 The evidence is going to show that, repeatedly,
25 Mr. Levandowski inappropriately and secretly downloaded

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1 confidential and proprietary Google documents concerning this
2 driverless car program on the very same day he was meeting with
3 Uber executives about moving over to Uber and developing their
4 LiDAR.

5 And here is some evidence. On December 11th, this is a
6 meeting notice from Uber and it talks about NewCo meeting with
7 Anthony and Lior. That's what they called this new company
8 that didn't exist yet, that they were going to pay millions of
9 dollars to. And it happened on December 11th.

10 Well, the evidence is going to show that my client
11 conducted an investigation and found out that on that very same
12 day, December 11th, Mr. Levandowski downloaded 14,000 files of
13 Google proprietary information from an SVN server.

14 The evidence is going to show -- and this is an image from
15 a report investigating this -- that Mr. Levandowski on that
16 very same day, December 14th, transferred those files -- it
17 says 24,000, but it's actually the 14,000. And the transfer
18 resulted in a bunch of junk files, which our expert will show,
19 transferred those to his personal laptop.

20 And you can see the file name, if you focus on file names,
21 "Chauffeur SVN." It's the same server information that he
22 downloaded.

23 And these files contained source code, electronic design
24 files, all kinds of technical and proprietary files about
25 Waymo's Driverless Car Program, about Waymo's custom LiDAR.

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1 And the evidence will show he took that as part of his plan
2 with Uber to take and misuse Waymo's technology.

3 The evidence of Mr. Levandowski and Mr. Ron trying to hide
4 their tracks continues. We have gotten access to some of their
5 texts back and forth.

6 And here is some more in December, where Mr. Levandowski
7 says:

8 "Let's do Slack and iMessage only, wink, wink."

9 Well, Slack is a place where you can communicate and store
10 files in a cloud, but there would be no way to track it from
11 Waymo. And iMessage is a messaging service that's off of the
12 Google Waymo system, and it wouldn't be able to be tracked as
13 well. Mr. Ron says okay.

14 The evidence is going to show that Mr. Kalanick was
15 driving this; that he was the one who wanted this. He was the
16 one who decided to break the rule.

17 And so here are some notes from Mr. Bares in December 22.
18 "Meeting with TK." That's Mr. Kalanick. And TK says, "What we
19 want" -- what we want from Mr. Levandowski -- "all their data."
20 "Pound of flesh" and, most importantly, "IP."

21 What's IP? IP is intellectual property. It's a lawyer
22 term, intellectual property. IP includes trade secret
23 technology. It's property. It's -- it's not just something
24 that's open for anybody. It belongs to somebody. That's why
25 they call it intellectual property.

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1 So he knew that what he wanted from Mr. Levandowski was
2 Google Waymo's property, its intellectual property.

3 The evidence further shows, if you go to January 3rd, an
4 email to Mr. Kalanick. The subject line, "NewCo Plan." And
5 the plan is to pull Anthony and team into Uber. Uber Super
6 Duper, was the code name for the project "\$." The code name
7 suggested by Mr. Kalanick for this whole project was "\$."

8 And then this memorialization of the meeting with
9 Mr. Kalanick:

10 "This laser is the sauce. "AL" -- that's Anthony
11 Levandowski -- "laser ends up being critical to AV" --
12 autonomous vehicle -- "success. No clear substitute."

13 So they're meeting with Levandowski and they're
14 determining that his knowledge that he developed while he was
15 at Waymo, these custom LiDAR products is the secret sauce.
16 It's the thing that's critical if they're going to be able to
17 make a self-driving car. There's no clear substitute to taking
18 what he knows about LiDAR and using it for their own
19 technology.

20 And, once again, Mr. Levandowski inappropriately downloads
21 Waymo Google proprietary information on the very same day that
22 he's meeting with Uber. Here is -- the day is January 4th.
23 What the evidence will show is that just before meeting Uber on
24 this day, he accessed these files which are in his report on
25 the bottom of this slide. This is slide number 25.

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1 And you'll see in the -- we're going to have a
2 confidential portion of the opening that the judge will explain
3 to you, but what you'll see in that session is that this
4 directly relates to one of the trade secrets that we're
5 contending that Uber misused right before the meeting.

6 And then after the meeting, later that day, 8:00 o'clock
7 p.m., our forensic analysis shows that he downloaded several
8 other highly proprietary files for himself to use as part of
9 his project.

10 It happened again on January 12th. The very same day that
11 he met with Uber people, he downloads a file.

12 So this is an email from Cameron Poetscher, who is one of
13 the deal team, to try to make this deal happen at Uber. He is
14 an executive. And he says:

15 "Sounds like Jeff/BAM/Bares' convo with AL" --
16 that's Levandowski -- "went well."

17 That was a conversation the day before, January 11. And
18 the forensic analysis shows on January 11th, later in the day,
19 Mr. Levandowski downloads a file.

20 This isn't just any file, by the way. This file is the
21 Chauffeur TL Weekly Updates Q4 2015 file. That's the file that
22 is the entire plan for the project, for the entire development
23 project at Waymo for Q4 2015. Within it are weekly updates of
24 what people accomplished in all of the different technological
25 areas and what they wanted to accomplish next.

1 Week by week by week by week, it's a complete layout of
2 all the details of what Waymo is doing in Q4 2015. He
3 downloads that the same day after his meeting with Uber. There
4 is no -- this is not a coincidence that he's repeatedly
5 downloading files the same day that he's meeting with Uber.

6 There is more evidence that's more circumstantial here,
7 but on January 12 Mr. Bares, who is the head of the ATC
8 program, met with the -- sends an email to another executive at
9 Uber saying -- and, remember, Mr. Bares is the head of their
10 program, technological guy. He says:

11 "I'm in SF" -- that's San Francisco. "I'm in SF
12 working something that I can't talk about. Wonderful,
13 huh?"

14 That's because it was secret. What they were doing, they
15 weren't even telling the people in Pittsburgh. They are
16 keeping it a secret. He couldn't even talk to his other
17 employees about it.

18 Then he says:

19 "I'm trying to swag a dream case long-range
20 laser. Really want to hear your input, but this is
21 dream land - meaning what would we really want if we
22 could get it?"

23 He's talking with Mr. Levandowski. And Mr. Levandowski
24 is: I've got all this technology. What do you want? Tell me
25 what you need and we can talk about what I can give you.

1 This is January 12th. Mr. Levandowski is still working at
2 Waymo, Google.

3 This is a very important email or meeting note. This is
4 another meeting note from Mr. Bares dated January 21st. It
5 reflects a meeting with Mr. Kalanick and several executives.
6 And I'd encourage you to read the yellow highlighting.

7 "TK's advice on legal: Tell them we're going to
8 do it. Ask how to minimize risk, minimize pain."

9 This is Kalanick saying: We're going to do it no matter
10 what the legal implications are, legal department. It's going
11 to happen. Accept that fact. Now you go figure out a way to
12 minimize the legal implications of this. Win at all costs.

13 Second place is for losers. Find the cheat codes.

14 This is compelling evidence of what they are up to here.

15 Just a few days later, on January 25th, Mr. Bares is
16 talking about what the value of paying these guys to come over
17 would be. And he says in a written document to Mr. Kalanick
18 that the X factor of the deal -- the X factor, the special
19 thing that makes it better than anything else -- is that they
20 have -- quote, has IP in their heads.

21 Now, IP -- remember what IP is? Intellectual property.
22 Trade secrets. Not that they're an expert in the field. Not
23 that they're a really good engineer, but they have Google's
24 intellectual property in their heads which they can give and
25 copy for Uber. That's what makes the deal -- that's the X

1 factor for the deal.

2 Mr. Levandowski -- Mr. Levandowski resigned without notice
3 on January 27th. This is another report -- a page from a
4 report investigating this matter in which an entity known as
5 Stroz said:

6 "A review of the internet history shows access to
7 Google Docs on January 26."

8 That's the day before he left, the day before he left. In
9 particular, he accessed a file named "Chauffeur TL Weekly
10 Updates, June 4, 2015."

11 Remember that file? That's the one that had all that
12 information about what Waymo is doing. He accessed it again.

13 "Further review of the laptop identified a file
14 with the same name in Levandowski's downloads folder,"
15 which is attached as Exhibit 27."

16 He downloaded it to his personal laptop the day before he
17 left, the entire plan for Waymo. He wasn't happy that he had
18 one from a week ago. He wanted the latest and greatest version
19 of that plan, so he downloaded it the day before he left.

20 The evidence goes on and it goes on and on. I'm not going
21 to have time to go through it all. But the evidence goes on
22 that right after he left, he -- he asked Mr. Kalanick, and
23 Mr. Kalanick agreed that he would indemnify Mr. Levandowski if
24 Google sued him for taking trade secrets.

25 And you'll hear evidence from Uber witnesses that, indeed,

OPENING STATEMENT / VERHOEVEN

1 Mr. Levandowski said, "I'm not going to do this. I'm not going
2 to do this deal unless you indemnify me if they sue me for
3 taking this stuff."

4 That was a deal breaker for him. Have to do it. And they
5 agreed to do it.

6 Here we have texts showing exactly what I'm talking about.
7 This is March 1, a text from Mr. Levandowski to Mr. Kalanick:

8 "I just see this as a race and we need to win.
9 Second place is first loser."

10 Another text, same day, from Mr. Levandowski to
11 Mr. Kalanick:

12 "We need to think through the strategy to take
13 all the shortcuts we can find. Want to get on that
14 subway."

15 Another text, a few days later, from Mr. Ron,
16 memorializing a conversation he had with Mr. Kalanick on
17 March 13th:

18 "TK, this is all about winning. To win, we have
19 to cross the finish line first. Losing is not an
20 option."

21 The evidence will show that on April 11th, Uber did a deal
22 to buy this company, this NewCo that didn't exist. Once
23 Mr. Levandowski left, they gave it a name. It's called
24 Ottomotto. Ottomotto is one of the defendants in this case,
25 and Uber purchased it.

OPENING STATEMENT / VERHOEVEN

1 And in the terms of the deal, there were milestones that
2 Mr. Levandowski had to meet. And if he met them, he would get
3 hundreds and hundreds of millions of dollars.

4 And this is the presentation that was made to the board of
5 Uber and explained the rationale for the deal.

6 "Lasers are critical to Uber's autonomous vehicle
7 development, and Ottomotto is expected to de-risk our
8 current laser approach. It's expected to accelerate
9 current timelines in the race."

10 The "Structure of the Deal" slide for the presentation.
11 Levandowski and his group are going to get paid \$592 million.
12 Now, Mr. Levandowski didn't even have this company until he
13 left Waymo at the end of January. So this is two months later.
14 And they're saying, oh, he's worth -- him and his guys are
15 worth \$592 million, but they hadn't done anything yet. They
16 hadn't created anything yet. What were they buying? They were
17 buying the IP technology.

18 The structure of the deal said that all of these payments
19 were tied to the achievement of the technical milestones. So
20 they're saying to Levandowski: We're going to give you
21 millions of dollars, but you've got to deliver and you have to
22 deliver these technical milestones really, really fast.

23 And the evidence will show, faster than anybody could --
24 who didn't already have them and copy them to do them.

25 And then it said Uber will indemnify -- as part of the

1 deal, they agreed Uber will indemnify Mr. Levandowski.

2 "Indemnify" means that if you get sued, we'll pay for your
3 legal expenses. If there's a judgment against you for a
4 million dollars, we'll pay for that, too. It's
5 indemnification.

6 And they agreed, Uber will indemnify Levandowski and his
7 group from, quote, claims from former employees, e.g., IP,
8 intellectual property.

9 In fact, the indemnification agreement -- the
10 indemnification agreement specifically referred to bad acts.
11 This is a copy of the indemnification agreement that's signed
12 by Mr. Kalanick.

13 And bad acts is defined as:

14 "Misappropriation by an employee of any trade
15 secrets of such employee's former employer."

16 So this is saying, look, if you get sued for bad acts --
17 i.e., taking trade secrets from your employer -- we're going to
18 pay for that. We're going to indemnify you.

19 And, finally, when the deal was signed a few days later,
20 Ottomotto received \$21 million up front.

21 What happened after the deal was signed? Levandowski went
22 into war mode.

23 And here is another Bares note, "Top priorities from
24 Travis Kalanick." The redirected top priorities. And there it
25 is right there:

1 "Cheat codes. Find them. Use them."

2 See that there? He wanted them to cheat. Find the cheat
3 codes for the video game so that you can jump and leapfrog.

4 Under "Tone" it's recorded as:

5 "The golden time is over. It's war time. Going
6 slower is not an option anymore. Top down versus
7 bottom up. In each area what we do we -- we do what
8 we need to do to win, then figure out how to get
9 there. Reality that matters is catching up. This is
10 the only reality that matters."

11 Now, a little bit later in that same day Mr. Bares notes
12 a, quote/unquote, jam session with Mr. Kalanick. And he
13 records that Mr. Kalanick wants Anthony Levandowski to allow us
14 to leapfrog, to jump on the subway, to leapfrog Google and
15 allow them to catch up.

16 Finally, on May 13th Mr. Holden sent Mr. Kalanick another
17 email talking about this war.

18 "This war for self-driving is truly existential
19 for Google. We'll either start up our second S curve
20 of growth or we'll die. We have two-story arcs. The
21 battle is about what we need to do to get ourselves
22 into a sufficiently competitive position before
23 December that G" -- Google -- "doesn't walk away with
24 the crown for future ride-sharing. The war is a
25 long-term defeat for Google."

OPENING STATEMENT / VERHOEVEN

1 Evidence is going to show that the CEO of Waymo met with
2 the CEO of Uber in July of 2016. This is after Mr. Levandowski
3 has left. This is after Uber has secretly signed this deal
4 which they signed in April. This is when Mr. Levandowski and
5 his group are using trade secrets to develop -- that Waymo had
6 to develop their technology. And what happens at this meeting?

7 Well, you'll hear the testimony. Uber never mentioned any
8 of it. Doesn't mention that it's hired Levandowski. Doesn't
9 mention that there's agreements that it signed. It's
10 telling -- it shows what they knew what they were up to.

11 And the evidence is going to show that Mr. Kalanick fibbed
12 when he told the press once he announced the deal. So back to
13 this Bloomberg transcript, the interview. He says:

14 "So just to close the loop, you meet with TED.

15 The technology isn't ready. When did you reconnect?"

16 I'm sorry, "You meet at TED." That's a TED conference.
17 So he meets Levandowski at a TED conference. The technology
18 isn't ready. When did you reconnect with Levandowski?

19 Kalanick says:

20 "We reconnected after he got Otto up and
21 running."

22 Well, we just saw the documents that show that's not true.
23 In fact, their plan before anything happened, when Levandowski
24 was still at Waymo, was to set up this fake company and then
25 purchase the company to make it look like they were doing

1 something that was legitimate, when they weren't.

2 When they announced the deal, Kalanick informed the public
3 that Mr. Levandowski would be put in charge of Uber's
4 self-driving car program. And he referred to him, quote, I
5 feel like we're brothers from another mother.

6 Now, when I sit down, my friend, Mr. Carmody, is going to
7 stand up and he's going to tell you from their side what the
8 evidence is going to show.

9 What I would like to tell you, but we're going -- and we
10 are going to do it -- it's going to be in a confidential
11 session -- is what the actual technology they took is. What
12 the specific things that you can look and you can see: Was
13 that Waymo and is that Uber? This LiDAR technology.

14 And there is tons of evidence. There is -- you'll see for
15 your own eyes, direct copy. But I can't talk about that in
16 this session because, obviously, we can't reveal our trade
17 secrets to the press.

18 But I know that -- I suspect that Mr. Carmody is going to
19 stand up in this session and say, "Hey, there's no real trade
20 secrets here. This is just common stuff. And they're just
21 trying to prevent Mr. Levandowski from leaving and doing what
22 he wants to do."

23 And I suspect they're going to point to an email, a stray
24 email from a gentleman named Sasha Zbrozek, and point out that
25 he mentioned -- let me tell you who he is.

1 He was the administrator of that SVN server, where the
2 14,000 files were downloaded. And we asked him, once we had
3 figured out what was going on, to figure out what -- there was
4 downloads by Mr. Levandowski because he was the administrator
5 at the time.

6 And he created a stray email in which he said that he
7 considered the information "low value enough that we even
8 considered hosting it off of Google's infrastructure."

9 He's going to stand up and say: That means there aren't
10 any trade secrets; that Google itself thought everything was
11 low value.

12 Well, you need to wait until the confidential section, and
13 you'll -- of the openings, and you'll see for yourself that's
14 not true. But you should know that this engineer, number one,
15 he wasn't in the LiDAR program. He didn't even know that LiDAR
16 technology would be trade secret or not.

17 Two, he was talking about, as opposed to personal
18 identifying information, which is the most secret thing that
19 Waymo or Google has -- your information is the most secret.
20 You cannot let that ever get out. That's more important even
21 than our trade secret technology. And so you're going to hear
22 a lot of hand-waving about this single email.

23 And, finally, if that's true, if everything is so low
24 value, why did you just see all of these documents from the CEO
25 of the company talking about this technology? The secret

1 sauce. The X factor.

2 There's another thing you may hear from the other side, is
3 we hired an investigative firm before we did the deal to look
4 into and make sure that Mr. Levandowski didn't take the
5 information and bring it to Uber and that this firm downloaded
6 the devices and secured them, quarantined them somehow, so that
7 nothing came over to Uber.

8 And I don't have enough time to go into that in detail,
9 but the evidence is going to show that they didn't quarantine
10 everything; that they didn't even look at Ottomotto's files.
11 They didn't even looking at Levandowski's cloud accounts. They
12 gave Levandowski back his cell phone, which had all kinds of
13 stuff on it.

14 They squeezed the Stroz investigation and asked them for a
15 report when they -- and the evidence will show they sent back
16 to them, "We haven't even reviewed 1 percent of the data that
17 we need to review."

18 And then just a few days later they did this deal, not
19 knowing what the Stroz report would be. In fact, the little
20 they knew when they did this deal on April 11th raised hundreds
21 of red flags because Stroz provided an interim report that said
22 that Levandowski had massive amounts of Google documents on his
23 laptop; that he had tried to delete some of those, and that
24 they sent them one of the file -- one of the file folders, and
25 they didn't have time to look at the documents, but they had

OPENING STATEMENT / VERHOEVEN

1 time enough to characterize them. And you'll see hundreds of
2 documents that Stroz labeled "Google Proprietary Presentation,"
3 "Google Proprietary Specification," "Google Proprietary." A
4 whole long list was delivered to the attorneys for Uber before
5 they did the deal on April 11th. What did they do? They did
6 the deal anyway.

7 So when you hear that this was all put in a vault or
8 quarantined, the evidence is not going to show that. The
9 evidence is going to show that this whole Stroz investigation,
10 just like the creation of Ottomotto, was a sham.

11 You remember the email that I asked you to think about
12 where Mr. Kalanick says to the Legal Department: Tell them
13 we're going to do it. Ask them how to minimize the pain. The
14 Stroz report is going to show what the attorneys came up with
15 to try and minimize the pain, but there was no question that
16 they were doing this deal no matter what happened at Stroz.

17 Finally, I'd like to talk a little bit about how Waymo has
18 been harmed by all this. And you're going to hear evidence
19 about that, but for purposes of my opening, let me just show
20 you what the parties who did this deal thought about the value
21 of this technology.

22 Mr. Bares, who I've told you about, on December 20th took
23 some notes in advance of a Levandowski meeting. And it's kind
24 of hard to read, but it says he would bring filter device about
25 what to try and not try, dot, dot, dot.

1 Then it is:

2 "A day with him and our team could save us months
3 toward 2020, which is our goal, (month equals 20
4 million run rate)."

5 That's how valuable they thought this technology was.

6 Mr. Ron, who was on the other side of the transaction with
7 Mr. Levandowski, created a text where he talks about the value
8 of the deal. And he says:

9 "Accelerate 300 to \$500 million a year. Cut at
10 least a year, probably more. Plus accelerate - reduce
11 capital cost to compete with Google in the meantime.
12 Few hundred millions on top."

13 They knew this was -- technology was very valuable and
14 that taking it would be very harmful to Waymo.

15 And then, finally, their own presentation, where they
16 calculated the present value of what they thought the
17 incremental EBIT -- Earnings Before Interest and Taxes --
18 contribution of the deal would be to Uber. They had a bunch of
19 ranges. The lowest was \$836 million, and the highest was
20 \$3,923,000,000.

21 So, members of the jury, we're here, like I said, because
22 Uber decided to take the subway. They decided winning was more
23 important than competing fairly and obeying the rules.

24 I ask you to listen to the evidence carefully, and I thank
25 you for your time.

OPENING STATEMENT / VERHOEVEN

1 **THE COURT:** All right, Mr. Verhoeven. Thank you.

2 **MR. VERHOEVEN:** Your Honor, are we going to tell the
3 jury about the closed session?

4 **THE COURT:** Well, I need to ask -- yes. We're going
5 to have a -- you're going to have a public session, right,
6 Mr. Carmody?

7 **MR. CARMODY:** I am, Your Honor.

8 **THE COURT:** And then we will have the closed session,
9 where the public is excused, where you two can talk about the
10 alleged trade secrets.

11 But let me ask you this: We've only been here an hour.
12 Can you all go about 30 more minutes before we take a break?

13 (Jury panel nodding affirmatively.)

14 **THE COURT:** Are you ready to start now?

15 **MR. CARMODY:** I guess so, Your Honor.

16 **THE COURT:** Well, what does that mean?

17 **MR. CARMODY:** I was going to ask for a restroom break,
18 but --

19 **THE COURT:** No, we'll accommodate you.

20 We're going to take a 15-minute break at this time.
21 Please remember my admonition, meaning no talking about the
22 case yet. It will be your duty to talk about the case at the
23 end of it, but not yet. Just talk about the Super Bowl or
24 something else.

25 All right. The Clerk will take you into the jury room.

OPENING STATEMENT / VERHOEVEN

1 **THE CLERK:** All rise for the jury.

2 (Jury exits the courtroom at 9:05 a.m.)

3 **THE COURT:** Be seated.

4 Mr. Carmody, you may arrange things the way you want them.

5 How much time would be public and how much time will be
6 private?

7 **MR. CARMODY:** My best guess, Your Honor, is the public
8 session be about a half hour, and the bulk of our opening will
9 be the private session.

10 **THE COURT:** All right. So, members of the public,
11 when we get to the part where I have to excuse you, I apologize
12 in advance. You can see the problem. The alleged trade
13 secrets won't be secret anymore if you get to report on it. So
14 we -- we will have to excuse everybody but those people who are
15 cleared under the protective order at that point.

16 All right. So we'll take a 15-minute break at this time.
17 Thank you.

18 (Whereupon there was a recess in the proceedings
19 from 9:06 a.m. until 9:23 a.m.)

20 **THE COURT:** Welcome back. Be seated.

21 So before we bring the jury in, have you reviewed the
22 handout that my Law Clerk -- the handout about the alleged
23 trade secrets?

24 **MR. GONZÁLEZ:** We did, Your Honor. That's fine.

25 **THE COURT:** Both sides?

OPENING STATEMENT / VERHOEVEN

1 **MR. VERHOEVEN:** We haven't seen it.

2 **THE COURT:** Yes, you have.

3 **MR. VERHOEVEN:** It's fine, Your Honor.

4 **THE COURT:** All right. Then how about the timeline,

5 which is just a copy of what you have up there? Is that okay

6 too?

7 **MR. GONZÁLEZ:** Yes, Your Honor.

8 **MR. VERHOEVEN:** Yes, Your Honor.

9 **THE COURT:** So my Law Clerk will place those two

10 things on each seat.

11 I understand there is an issue about -- well, you wanted
12 to have a sidebar about someone being able to stay here during
13 the nonpublic part. Have you worked that out between you? If
14 not -- if not, we'll -- let's do this. At the time we begin
15 the private part, we will -- you can come forward and be heard.
16 All right?

17 **MR. VERHOEVEN:** Yes, Your Honor.

18 **THE COURT:** All right.

19 Mr. Carmody, are you now prepared? Have you got it all
20 set up the way you want?

21 **MR. CARMODY:** We do, Your Honor. Thank you.

22 **THE COURT:** All right. Let's bring back our jury,
23 please. You used 55 of your 70 minutes.

24 **MR. VERHOEVEN:** Thank you, Your Honor.

25 **THE COURT:** All right.

1 (Brief pause.)

2 **THE COURT:** Mr. Carmody, I'm going to explain to them
3 what the handouts are. You can stand there if you wish, but it
4 will take about 30 seconds.

5 **THE CLERK:** All rise for the jury.

6 (Jury enters the courtroom at 9:25 a.m.)

7 **THE COURT:** Welcome back. Be seated, please.

8 Now, before we resume, you will see that we put two
9 handouts on your chair, and one of these is the timeline that
10 the lawyers have been good enough to agree on.

11 This timeline is not every important date in the case.
12 Really, there would be more dates in there if it was every
13 single one, but it's just a general representation of some of
14 the important dates in the case. And over many trials I have
15 found that if the jury has a simple enough framework on a big
16 board like that, it helps you, the jury, fit the testimony in
17 as one witness after another comes in.

18 When they refer to some meeting that happened on January
19 X, 2016, or '17, then you can glance at the timeline and kind
20 of get a feel for where it fits in.

21 That's all it is. It's not really evidence in the case.
22 It's -- it's just a demonstrative calendar aid to help you.

23 So you can keep your own personal copy of this and tuck it
24 in the back -- fold it over and tuck it in the back of your
25 steno pad and consult it as you wish. You don't even have to

1 consult it. That's up to you. It's there for your
2 convenience.

3 The second one is a list of the alleged trade secrets in
4 summary form, a single page. There will be much more evidence
5 presented at trial about them than is on that one page, but
6 both sides thought it would be a good idea to give you
7 something like this as a handy-dandy, very quick-and-dirty
8 summary so that you can keep it straight. Again, there will be
9 more evidence about it. And the list itself is not evidence.

10 Now, this particular one, you've got to keep secret for
11 the rest of your life until I give you instructions to the
12 contrary, which I might, of course. But this one, because it
13 does summarize the alleged trade secrets, it has to be kept
14 secret for the time being.

15 Now, I'm in no way saying they qualify as trade secrets;
16 that's for you to decide. I'm not saying they don't qualify;
17 that's again for you to decide. But in order to even preserve
18 the option, we've got to keep it secret for the time being.

19 So that one, that one requires special handling on your
20 part. But you're the jury. You get it.

21 Okay. Got that part? If I was you, I would fold them in
22 half, stick them in the back of your steno pads and consult
23 them as you feel you wish you want to.

24 Mr. Carmody, are you now prepared?

25 **MR. CARMODY:** I think so, Your Honor. Thank you.

OPENING STATEMENT /CARMODY

1 **THE COURT:** Now, remember, this is Mr. Carmody. He
2 represents both defendants. And now he will give the opening
3 statement on their behalf.

4 The floor is yours.

5 **MR. CARMODY:** Thank you, Your Honor.

6 OPENING STATEMENT

7 **MR. CARMODY:** That was quite a story we just heard. A
8 tale of conspiracy between Anthony Levandowski on one hand and
9 Uber on the other. I want to tell you right up front, it
10 didn't happen. There's no conspiracy. There's no cheating.
11 Period. End of story.

12 I'm Bill Carmody. I'm here on behalf of Uber. And we've
13 waited a long time to be here with you before a jury of our
14 peers because, as jurors, you're able to dig deeper and
15 separate these sensational emails you see from the truth.

16 Now, Anthony Levandowski is not a party in this case. So
17 what Waymo wants you to believe is Anthony Levandowski got
18 together with Uber as part of some grand conspiracy to cheat
19 and take trade secrets. But, like most conspiracy theories, it
20 just doesn't make sense once you hear the whole story.

21 Let me give you a couple of examples of things that are
22 really important facts that you didn't hear in the last hour or
23 so.

24 First, Waymo wants you to believe that Uber paid hundreds
25 of millions of dollars for Levandowski's company to get trade

OPENING STATEMENT / CARMODY

1 secrets. That's what the payment was for. Not true.

2 What Waymo doesn't tell you is that there was \$100,000
3 paid to Anthony Levandowski and his company. \$100,000, not
4 hundreds and hundreds of millions of dollars. You saw the
5 592 million. Didn't happen. The big, big dollars would only
6 come if these performance milestones were met and Uber became
7 top of the heap in this self-driving car business.

8 You know what Waymo didn't tell you? That Google had that
9 same program. They didn't tell you that Google had that very
10 same program. And you know what the purpose of Google's
11 program was? To make Anthony Levandowski rich if their
12 Chauffeur Program succeeded.

13 Larry, who's being talked about, is the co-founder, CEO of
14 Google and his directive was that if this Chauffeur Program
15 succeeds, make Anthony Levandowski rich. And you know what you
16 didn't hear? Anthony Levandowski was paid by Google
17 \$120 million.

18 We have -- we have Waymo wanting to make this whole deal
19 and the dollar signs being thrown around for this Uber
20 acquisition of Otto. They want to make it sound suspicious,
21 when they did the very same thing themselves.

22 There's another thing they said that's really important
23 here. The whole gist of this opening was that this conspiracy
24 results in Uber getting the crown jewels, getting Waymo's crown
25 jewels. Not true.

1 You know the downloads he's been talking about the whole
2 time. If you take a look on this big timeline -- it's
3 December 11 -- it says:

4 "Levandowski accesses Google's SVN server and
5 downloads."

6 These downloads, according to the engineer who designed
7 the server -- he's a fellow who designs -- the Google engineer,
8 he designs circuit boards himself, what's at issue in this
9 case. He designs circuit boards. He designed a server. He
10 decided where things go, where things don't go.

11 Let's see what he said, and then let's talk about what
12 counsel didn't tell you about the importance or non-importance
13 of these downloads taken by Anthony Levandowski while he was at
14 Google.

15 The engineer at Google, he says it's all electronic
16 designs, schematics and PCB layouts -- those are printed
17 circuit board layouts, what you're going to be hearing a lot
18 about in this case -- and the component library for their
19 creation.

20 "It was considered low value enough that we had
21 even considered hosting it off the Google
22 infrastructure."

23 Counsel described this email, I believe, as a stray email.
24 He didn't tell you that this email was written by this Google
25 engineer to who? The Waymo lawyers. The Waymo lawyers before

OPENING STATEMENT / CARMODY

1 this suit was filed. That's the fair context of this email.

2 And you know it's bad when they got to mention it in their
3 part of the opening to try to explain it away. These
4 documents, the whole basis of what Waymo says triggered this
5 lawsuit, they are unimportant, these downloads.

6 And you know what else Waymo didn't tell you? That Uber
7 never got any proprietary information. Let me step back and
8 say this again.

9 You've heard all these examples about the race, Rosie Ruiz
10 cheating to win the Boston Marathon; right? Waymo, in this
11 case, was the race official. You know why? Not once or twice
12 or three or four, five, or six or seven or eight or nine times,
13 not ten, but 11 different times Waymo, as the race official,
14 comes over to Uber to inspect all -- inspect the LiDAR we make,
15 inspecting the computers, inspecting everything to make sure
16 there's no cheating.

17 And you know what happens? There is not a single piece of
18 Google proprietary information at Uber, not the 14,000 --
19 forget about the 14,000 downloads. I'm talking about nothing.
20 Zero. That's it. Period. They don't want to talk about that.

21 What else isn't Waymo telling you in this case? That
22 Anthony Levandowski -- who you heard his name a whole bunch of
23 times. They are not telling you that these downloads -- they
24 say the theft here of the trade secrets, which somehow are in
25 Fuji, they don't tell you that Anthony Levandowski had nothing

1 to do with the part of Fuji at issue here.

2 Let me say that again, because this is the elephant in the
3 whole courtroom.

4 You hear -- you see the sensational emails. You hear
5 about Anthony Levandowski. If I'm you, I'm like, uh-oh, this
6 doesn't look so good for Uber. So let me say this again.
7 He -- obviously, Anthony Levandowski did some things at Google
8 he shouldn't have done, but there is no connection whatsoever
9 between any files he downloaded, all these little emails, and
10 what's in here.

11 What's in here comes from people at Uber, real engineers,
12 other engineers, who bring to bear their engineering talents,
13 not stealing Waymo's trade secrets. They're bringing to bear
14 what they know in their head, what they've learned in their
15 lives, all the engineering skills, all the publicly-known ideas
16 they have to work on part of this LiDAR at issue.

17 This turns out that Waymo has the same thing in part of
18 its LiDAR. But the point that's so fundamental to this case is
19 Waymo doesn't own every idea in its LiDAR. I mean, nobody can
20 own engineering concepts and engineering talent that every
21 LiDAR engineer brings to bear. Nobody can own publicly known
22 ideas that we can all look up on the internet or books or
23 patents.

24 That's why, at the end of this case, the most important
25 thing for you all to do is to determine if the engineering

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1 concepts that we're going to be talking about more in the
2 private session, which are the heart of this case, whether
3 they're trade secrets at all.

4 Waymo bears the burden of establishing that each and every
5 one of these so-called trade secrets are actual trade secrets.
6 And to do so, they've got to hit the small target downfield
7 there. And it's because engineers, California and everywhere
8 else in America, are free to go from one job to the other.

9 They don't get a lobotomy in between. They bring all their
10 engineering talent, all the skills they've learned, their
11 education, the publicly known stuff they've worked with, and
12 they can work on the very same technology in the new company.
13 That's okay. The only thing that's not okay is if they take
14 their former employer's trade secrets.

15 Now, I want you to meet here the engineers, the very
16 talented engineers at Uber who are responsible for designing
17 and building the very small little part of this LiDAR that's at
18 issue in this case. There's three of them. They're all going
19 to come and testify.

20 We have Gaetan Pennecot, James Haslim and Scott Boehmke.
21 And they are going to tell you that Anthony Levandowski had
22 nothing to do with their work here. They're going to tell you
23 there's no trade secrets here. What they did is what every
24 LiDAR engineer does on a daily basis. They make decisions and
25 solve problems based on what's in their head, what they've

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1 learned in life.

2 And so when we step back here and think about this, at the
3 end of the case what you're going to realize is the tech here
4 tells the truth. And when I have a chance in the closed
5 session, when the public is gone, I'm going to walk through,
6 painfully, a little slow, but all the different so-called trade
7 secrets to show you that they're just not.

8 So you might be saying: Well, if Waymo is suing Uber and
9 these aren't real trade secrets, why are we even here? How did
10 we get this far? What's this all about?

11 It started a few years back at Uber, before there was ever
12 a Waymo. What Google decided is -- Google was concerned. Let
13 me just tell you right up front. Google was concerned about
14 its biggest competitive threat. You know its biggest
15 competitive threat is Uber.

16 What Uber -- excuse me. What Google was doing was saying:
17 Hmm, we've got this self-driving car program. How do we make
18 the big bucks here? And so what they realized is the way to
19 make the big dollars in a self-driving car program is to
20 compete against Uber in its ride-sharing business.

21 And we're going to show you an internal Google
22 presentation from a couple years ago that we get because of
23 this lawsuit. And it talks about entering this ride-sharing
24 market -- TaaS up top means Transportation as a Service --
25 talking about how formidable Uber is and, importantly, scheming

1 behind the scenes as to what it would take to consume all of
2 Uber's profits in 2025.

3 Uber, around the same time, realizes the future of its
4 ride-sharing business is to get into self-driving cars. And so
5 what Uber does is it goes to the epicenter of robotics. It's
6 Pittsburgh, Pennsylvania. It's Carnegie Mellon University. I
7 mean, they're second to none up there.

8 They go up, Uber does, and acquires -- puts together a
9 several-hundred-million-dollar deal and acquires a renowned
10 group of engineers to start Uber's self-driving car program.
11 The initials ATG stand for the Advanced Technology Group. And
12 it's headquartered up in Pittsburgh, and you can see the
13 results of this deal up on the screen. But there's also folks
14 in the group that are right here in San Francisco.

15 And I want to take a moment and introduce you to Eric
16 Meyhofer.

17 Eric, would you stand up a second?

18 (Mr. Meyhofer rises.)

19 **MR. CARMODY:** Eric is here with us as a representative
20 of both of the defendants in this case. Eric is the head of
21 the whole ATG company-wide in Uber. He's going to be here for
22 the public portions of the case that he's allowed to see.

23 (Interruption in the proceedings.)

24 **THE COURT:** I'm very sorry. I have been doing this
25 job 19 years. This is the first time signals have come in from

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1 outer space. And it makes me wonder if -- there are so many
2 issues this raises, but what we're going to do -- with
3 apologies to Mr. Carmody. It's not his fault at all. He had
4 nothing to do with this.

5 We're going to ask you to go back into the jury room until
6 I can sort this out, and then we'll bring you back in here.
7 Please remember my admonition.

8 Thank you.

9 **THE CLERK:** All rise for the jury.

10 (Jury exits the courtroom at 9:45 a.m.)

11 **THE COURT:** The public can be excused. You can stay
12 here, if you wish.

13 I don't know what this is. My courtroom court reporter
14 thinks it's Judge Breyer's courtroom on 17. She recognizes
15 Lashanda's voice. Why in the tarnation this would be coming
16 through on our system, it just is not right. I cannot even --
17 I won't even venture an explanation. So we've got to sort this
18 out.

19 This makes me wonder, well, does that mean that every
20 trade secret that we're going to be talking about is going out
21 to all the other courtrooms? That would be crazy.

22 So your judge is not too happy about this. So we've got
23 to sort it out. Be ready to go in a few minutes.

24 (Jury exits the courtroom at 9:47 a.m.)

25 Counsel, in my moment of need, the IT people naturally

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1 have abandoned me, but possibly -- this is just my theory. She
2 was using the wireless mic on number 17 floor, and our receiver
3 on 19 was picking it up. That's a crazy theory, but that's the
4 best I can come up with.

5 We've turned that -- we've turned our wireless mic off. I
6 don't know why our wireless mic would have been on to begin
7 with, but it was -- it's off now; right?

8 **THE CLERK:** Yes.

9 **THE COURT:** So if that was the problem, maybe we're
10 okay. I -- we're not picking it up any more. I'm -- I hate
11 for a lawyer to have this happen in the middle of their
12 opening.

13 Do you want to -- I'll do whatever you want. Do you want
14 to proceed? Do you want to wait? What's your druthers?

15 **MR. CARMODY:** I guess the bottom line, Your Honor, is
16 I would like -- we do have some slides. I'd like to be able to
17 show those.

18 **THE COURT:** We will. Can we -- is the rest of our
19 system going to work, Angie?

20 **THE CLERK:** Yes, Your Honor.

21 **THE COURT:** So the slides will work, I think.

22 **MR. CARMODY:** What are we missing then?

23 **THE COURT:** Nothing. The wireless mic is the only
24 thing that will be off, and we don't need that.

25 **MR. CARMODY:** And I guess I have a question. Could I

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1 borrow a minute from the court maybe to kind of get back on
2 track where I was there?

3 **THE COURT:** Yes.

4 **MR. CARMODY:** Thank you.

5 **THE COURT:** Okay. Here's what we're going to do.
6 We're going to try it. And I am giving you a extra
7 commendation for putting up with this nonsense. And then you,
8 if it turns out you get -- it happens again, then I don't know.
9 We'll figure out something fair. But this is not the way to
10 run a railroad.

11 Yes?

12 **MR. VERHOEVEN:** All that's fine with me, Your Honor.
13 I'm just a little concerned about the confidential session, if
14 we're not sure that we're not broadcasting somewhere else. It
15 would be nice if we had assurance there.

16 **THE COURT:** Well, when the IT people get here, we'll
17 ask them that very question.

18 **MR. VERHOEVEN:** Okay.

19 **THE COURT:** That's a fair point.

20 All right. So let's do this. Let's -- but you've only --
21 you've only used up 13 minutes, and I'm going to give you a
22 couple more. So you've got a long way to go before you even
23 get to that part; right?

24 **MR. CARMODY:** Yes, yes.

25 **THE COURT:** So maybe by then the IT people will show

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1 up. Okay?

2 All right. So let's bring back our jury and stumble
3 ahead.

4 **MR. CARMODY:** Your Honor, what I'm hearing from the
5 tech guy is the system is gone.

6 **MR. GONZÁLEZ:** We need to make sure everything is
7 working before we bring them in.

8 **THE COURT:** Angie, power up the overhead projector.
9 Okay. Make sure everything else that you want is working.

10 Kanu, look in the jury box...

11 **MR. CARMODY:** I'm all set. I got a sneak preview.

12 **THE COURT:** All right. So we're ready to go. Thank
13 you.

14 (Jury enters the courtroom at 10:00 a.m.)

15 **THE COURT:** All right. Welcome back. You all will
16 eventually learn that if you come in in order, you don't have
17 to step across each other.

18 All right. Now, the mystery signal from outer space, we
19 don't quite know yet. And Mr. Carmody is being a good sport
20 about it and is willing to go ahead even though I can't give
21 him a guarantee that it won't recur. So he's willing to do
22 that.

23 Bear with him in case this happens again. We're trying to
24 save you time. That's what's going on here. We don't want to
25 waste your time. So I'm giving him a couple of extra minutes

1 to get back on track.

2 Mr. Carmody, please continue.

3 **MR. CARMODY:** Thank you, Your Honor.

4 What I was talking about before our little break is what
5 this case is really about, which is Waymo wanting to stop its
6 biggest competitive threat, Uber.

7 And we kind of finished with talking about Uber realizing
8 the future of its own ride-sharing business was getting into
9 self-driving cars and how they went up to Pittsburgh,
10 Pennsylvania and got a whole bunch of engineers and a big-time,
11 several-hundred-million-dollar deal from car dealer robotics up
12 there.

13 And you can see the results on the screen.

14 Now, what happens as soon as this news gets public? The
15 very next day the head of Google's self-driving car program,
16 Chauffeur, his name is Chris Urmson, he sends an email that I'm
17 going to show you to the founders of Google, Larry Page and
18 Sergey Brin, telling them -- sounding the alarm, telling them
19 that the Google program that you've heard is so many, so many
20 years ahead, they weren't playing to win anymore.

21 Let's take a look at what Mr. Urmson says to Larry Page
22 and Sergey Brin. He says:

23 "We have invested in self-driving cars, but over
24 the last six months we've stopped playing to win and
25 instead are now playing to minimize downside."

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1 He says Uber is acquiring the people that he wanted to get
2 about a year and a half ago, but was denied the opportunity to
3 do so.

4 He considers potentially hiring away people from Uber who
5 might be important to Google.

6 He concludes with:

7 "We have a choice. The choice between being the
8 headline or footnote on history's book on the next
9 revolution in transportation. Let's make the right
10 choice."

11 That's what he says. You know why he says it? Because he
12 realizes he knows that the lifeblood of a self-driving car
13 program is engineering talent. Google then had the best
14 engineers, but they were scared to lose them to Uber. They
15 knew -- the only way -- Google knew the only way they could
16 possibly win in the self-driving car market was to get and to
17 retain the top engineering talent.

18 You know why? In Silicon Valley today's technology is
19 kind of yesterday's news. It goes so fast. It's like, you
20 know, we buy a computer or bring a phone home and by the time
21 you we get home it's outdated.

22 What they're looking for, what Google is looking for, what
23 Uber is looking for are the most talented engineers who could
24 build tomorrow's technology. That's what this is all about.

25 And so just two days after this email, this head of

1 self-driving car over at Google, you know what he does? He
2 puts together a list. He puts together a list of employees he
3 doesn't want Uber to get.

4 But the Chauffeur engineers aren't happy. Anthony
5 Levandowski is not happy. And Anthony Levandowski leaves. And
6 look who's upset. Larry Page, the founder. You know, Mr. Big
7 at Google. He is not happy about this. And we see that Larry
8 Page is upset because the folks that were the head of Chauffeur
9 allowed Anthony Levandowski to leave.

10 Larry Page is worried that Anthony Levandowski is going to
11 start something competitive. And Larry Page is upset that
12 Anthony Levandowski leaves. And guess what? Google still owes
13 them his \$120 million bonus. Fifty was paid. He's still got
14 another 70 to go, and he walks out the door. But when Anthony
15 Levandowski leaves, the floodgates open. Other engineers, and
16 lots of them, go to Anthony Levandowski's new start-up called
17 Ottomotto.

18 And we can see here Chris Urmson -- remember the fellow
19 who just wrote the email alerting Larry Page and Sergey Brin --
20 he gets replaced by a gentleman by the name of John Krafcik, an
21 automobile executive who comes over to become the new kind of
22 CEO of Chauffeur. And now he's the CEO of Waymo.

23 He comes in after a couple more people leave. I mean,
24 they're just going like this (snapping fingers). And he says,
25 "We need a plan."

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1 I'm going to tell you what the plan is. The plan is they
2 bring in the lawyers. They bring in the investigators. And
3 for Anthony Levandowski and 13 other people who went to join
4 Anthony Levandowski's new company, they forensically search
5 everything. I mean, cloud storage, hard drives, emails. There
6 is not a thing that remains untouched.

7 What happens next is word gets out to the public that Uber
8 is going to be acquiring Ottomotto, Anthony Levandowski's
9 company. And we can see a senior engineer at Google, who's
10 saying:

11 "One of the significant effects of today's
12 Otto/Uber news is increased risk of attrition for us."

13 It's all about Google worrying about their talent, their
14 engineers leaving. And he goes on to say:

15 "This, combined with interesting and plentiful
16 exit opportunities" -- and he goes on to name some --
17 "makes Chauffeur look less competitive from the
18 financial perspective, so I think we should be
19 seriously concerned."

20 Google is seriously concerned because Uber could catch up
21 to its own self -- it's own stalled self-driving car program.
22 And what do we have next? We get to see, because of this
23 lawsuit, all these internal -- these are all internal Google
24 documents.

25 You know what this one is? This is lawyers and

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1 investigators. And we now find out after the fact that Google
2 is even contemplating trying to prevent Uber from acquiring
3 Anthony Levandowski's company, Ottomotto.

4 And think about this for a second. This -- we go back to
5 the timeline. I'm going to tell you, this is written here,
6 August -- excuse me. It's written August of 2016, but at a
7 time when Google has no idea that Anthony Levandowski has
8 downloaded anything improperly.

9 So you say to yourself, why are they trying to break up --
10 why is Google trying to prevent Uber from acquiring Ottomotto?
11 I mean, what could be the reason? What's going to become
12 apparent to you in this case, it's not about Uber taking Waymo
13 or Google's technology. It's about us getting their top
14 talent. I mean, that's what this case is about. And we can
15 see it right here.

16 And what happens next? The lawyers latch on -- after this
17 whole big forensic review I was telling you about, they latch
18 on to these downloads. And so they go to this internal
19 engineer at Google, this fellow who I said is so good he
20 actually designs these circuit boards. He designed -- he sets
21 up the server. He determines what goes where. He's not just
22 a -- you know, some junior leaguer there.

23 He says to the lawyers, when the lawyers are saying: Look
24 what we found. What does this mean? He says: It doesn't mean
25 anything. It's low value. It was so low value we had even

1 considered hosting it off the Google infrastructure.

2 That's what he says. That's what he tells the lawyers
3 before this suit is ever filed. Yet, the lawyers want to go
4 forward, as lawyers do, and file a lawsuit anyway. So they go
5 back to this same engineer again.

6 And listen to what he says. He tells the lawyers:

7 "I'm a little leery because both of those
8 numbers" --

9 And the numbers he's talking about are the amount of the
10 14,000 downloads and the size of those downloads.

11 He says:

12 "Those numbers aren't really meaningful to any
13 narrative. It also has a chilling effect on being a
14 hardware engineer. We all do full checkouts."

15 And a "full checkout" is when you hook your computer up to
16 the server and if you follow Google's instructions, all the
17 files come. The whole server is downloaded on your computer.

18 But what he says that should have been important to
19 Waymo's lawyers, but wasn't, is the whole thing makes him
20 uncomfortable to think that the lawyers are trying to ascribe
21 suspicion to it. And, folks, the very next day this lawsuit is
22 filed. The very next day.

23 And after this lawsuit is filed, what happens? Well,
24 Waymo teams up with Uber's arch competitor, Lyft, in the
25 ride-sharing space. And the parent company of both Waymo and

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1 Google, a company called Alphabet, invests a billion dollars in
2 Lyft.

3 The point that I want you to consider as you go through
4 the evidence is why this suit was brought in the first instance
5 if these files which supposedly triggered the suit weren't
6 important, the engineer who stored the files told that to the
7 lawyers, but the suit was filed anyway.

8 Now that we've talked a little bit about why we're here,
9 let's move on and talk about why Uber wanted to acquire Anthony
10 Levandowski's company, Ottomotto.

11 Even after the whole big Carnegie robotics deal up in
12 Pittsburgh, Uber was hungry for more top talent. Uber was
13 willing to pay top dollar for top talent wherever it came from.
14 I mean, it could have been Apple, Tesla, Google, some college
15 campus.

16 You know, the Golden State Warriors a couple years ago won
17 more basketball games than anybody, but they lost the
18 championship. So they went out and got Kevin Durant, who was
19 maybe the top free agent around.

20 Uber was the same way. Uber had built an amazing
21 self-driving car team in San Francisco and in Pittsburgh, but
22 they wanted more. And they thought their Kevin Durant was
23 Anthony Levandowski. And why did they think that?

24 Folks, it is absolutely undisputed that Anthony
25 Levandowski is brilliant. He is a pioneer in the autonomous

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1 vehicle business. He -- when he was at Berkeley, he did a
2 self-driving motorcycle that's now in the Smithsonian in
3 Washington, D.C. And he convinces Travis Kalanick he can make
4 self-driving cars a reality at Google -- excuse me, at Uber.

5 And as we are here today, and knowing everything we know,
6 Uber regrets ever bringing Anthony Levandowski on board. And
7 the reason they do so is because for all his time at Uber, all
8 Uber has to show for Anthony Levandowski is this lawsuit. I
9 mean, this is it.

10 So let me talk a little bit about what Uber did to make
11 sure that, when Anthony Levandowski came over with all the
12 other engineers at Ottomotto, that none of anything they had,
13 no proprietary information that they may have had from Google,
14 could possibly come to Uber.

15 The way this starts off is, in Silicon Valley, when
16 engineers move from company to company, the standard deal is
17 companies say, Here, sign on the dotted line. We have an
18 agreement. And please tell us and affirm that you're not
19 bringing your former employer's intellectual property or
20 proprietary information to us. We don't want it.

21 That's the way it works. That's what Google does. That's
22 the standard.

23 Uber here, because it had agreed to indemnify
24 Mr. Levandowski, that was one of the terms of him coming on
25 board here, Uber did a lot more. Uber went out and hired one

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1 of America's preeminent forensics firms called Stroz Friedberg,
2 a firm that Google itself uses.

3 And what Stroz Friedberg did was kind of set up a safety
4 net. What they did is they interviewed -- and you saw some of
5 the interview notes before from counsel. They interviewed a
6 lot of people. They collected all the computer devices from
7 the leadership of Ottomotto for the purpose to ensure that it
8 didn't get over to Uber.

9 And like all nets, there are some holes here. But the
10 evidence is going to show you that none of the eight so-called
11 trade secrets -- which is what this case is really, really
12 about -- ever make it to Uber. That's what happened.

13 And so you hear counsel, though, talk about Stroz, talk
14 about the indemnity, talk about sensational emails. And of
15 course they're going to be talking about that because they
16 don't want to talk about the technology this case is based on.

17 It's like when you talk to a politician about a real issue
18 and they switch and start giving you an answer about dirt on
19 their opponent. I mean, you should be thinking, anytime in
20 this case Waymo is talking about something other than these
21 eight so-called trade secrets, you should ask yourself why.

22 Now, Waymo wants you to believe that this whole case can
23 turn on whether Uber bought a business -- bought a company from
24 someone who is untrustworthy. I mean, that's really the gist
25 of what happened in about the last 50 minutes.

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1 If you buy a company with some new code that's supposedly
2 not yet formed, there's something funky going on. That's what
3 they say. But that's not the issue in this case, folks. And
4 if it was, Google would be in real trouble. You know why?
5 Years and years earlier, at a time when Google knew Anthony
6 Levandowski wasn't trustworthy, you know what they did? They
7 bought two companies from him.

8 I'm going to take you back for a moment to the year 2011.
9 Anthony Levandowski is an employee at Chauffeur, the
10 self-driving car program over at Google. And he's got a couple
11 of side businesses. He's competing with Chauffeur doing
12 self-driving cars, doing LiDAR. It turns out he's not
13 forthright with Google about his involvement. Forget not being
14 forthright. He lies to Google about his activity in these
15 businesses.

16 Yet Larry Page wants Google to go ahead anyway and buy
17 these companies from Anthony Levandowski. And if we take a
18 look right here at an email, you're looking at an internal
19 email back in the year 2011, at Google, where one of their
20 senior executives, a gentleman by the name of David Lawee, he
21 says, "As Google, I suppose I'm prepared to take the risk with
22 Anthony." He's taking the risk and buying these companies
23 because Larry Page said that's what you need to do.

24 But he says, "I can say definitively that if I was
25 choosing a business partner to start a company with, there is

1 no way in hell I'd proceed."

2 And so Google knew how untrustworthy Anthony Levandowski
3 was. He doesn't get fired. You know what happens? We saw
4 this email earlier. Larry Page directs David Lawee, the
5 gentleman who just wrote the last email, to make Anthony
6 Levandowski rich if Chauffeur succeeds.

7 And so what happens is Google buys these two side
8 businesses from Anthony Levandowski, the ones he lied about,
9 for 20 million and then incentivizes him. He gets another
10 \$120 million from Google.

11 Uber was just like Google, though. Uber was prepared,
12 from the words of Mr. Lawee, was prepared to take the risk with
13 Anthony Levandowski because he was the hottest guy around. He
14 was the hottest commodity in the whole autonomous vehicle
15 business.

16 And just like Google, the fact that Uber went forward and
17 brought onboard some rock star engineer doesn't mean they're
18 guilty of wrongdoing.

19 I mean, you're going to be hearing in the next couple of
20 weeks about this fellow, Anthony Levandowski. You're going to
21 hear that he has a pattern of surprising -- unusual may be a
22 fairer word -- of unusual behavior that goes way, way back. We
23 know it certainly goes back to his early days, 2010 or so at
24 Google. It probably goes back way before that.

25 You're going to hear that Anthony Levandowski is now rich

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1 because of all the money Google paid him. And you're going to
2 hear that this guy, Anthony Levandowski, is able to somehow
3 convince Silicon Valley titans like Larry Page and Sergey Brin,
4 the founders of Google, and Travis Kalanick, the founder of
5 Uber, that they needed him. They needed to bring him on board,
6 and they needed to keep him on board even though there were
7 warning signs that he wasn't trustworthy.

8 And you're going to hear that Uber fired Anthony
9 Levandowski. And I bet you at the end of this case there's a
10 couple of you that are kind of struggling to understand why
11 this young, brilliant, rich man did some of the things he did.
12 But Anthony Levandowski is not on trial here. It's Uber.

13 And your job at the end of this case is to determine, is
14 Uber liable for misappropriating these eight engineering
15 concepts that Waymo claims to be trade secrets? To do so,
16 you're going to have to go back and, first and foremost,
17 decide, based on the evidence that both sides present, whether
18 or not Waymo can meet its burden to show that what's in here,
19 in a little, little, small part -- I can turn it around -- it's
20 right in here -- if the little stuff you're going to be talking
21 about, that we talk about in the tech session, if those are
22 trade secrets or are they just the concepts, the engineering
23 concepts that Uber's engineers are free to use because it's
24 their everyday knowledge in their head and what's otherwise in
25 the public realm.

1 At the end of this case, you're going to realize what
2 matters is the technology. It's not Anthony Levandowski.
3 You're going to get beyond, I believe, at some point, these
4 emails, and you're going to say, oh, it's a trade secret case.
5 What's the tech? And you're going to realize the tech tells
6 the truth.

7 We've waited a long time to be here. We are here because
8 we believe in this. And we are finally, for the first time
9 ever, in front of people outside these companies who sign the
10 little fancy piece of paper, we're going to be able to reveal
11 the tech that this case turns on. And you're going to be able
12 to see that Waymo's actual claims, they just don't hold water.

13 And so once the public leaves the courtroom, I'm going to
14 spend the rest of my time, the bulk of my time, on the tech,
15 what this case is really all about.

16 Thanks.

17 **THE COURT:** All right. Thank you, Mr. Carmody.

18 Are we now -- we're about to proceed to the nonpublic
19 part. Are all of you over there ready to go forward, and can
20 we proceed without another break?

21 (Jurors nod heads.)

22 **THE COURT:** Good. Now, before I excuse everyone, my
23 law clerk has told me something that -- I hate to even bring
24 this up, but she says there's someone on Twitter pretending to
25 be me.

1 (Laughter)

2 **THE COURT:** I don't have a Twitter account. I
3 couldn't tell you how to use it if I -- I don't do those things
4 for obvious reasons. And I don't have a Twitter account. So
5 whoever it is who is pretending to be me is an impostor. So
6 there. Good luck to you. Don't be taken in by that.

7 All right. The second thing is that I got a note that
8 indicates my theory is probably correct, that our receiver was
9 picking up handheld mic signals from a different floor, which
10 should not have happened. But -- so maybe we are -- we're
11 getting closer to identifying that problem. Excuse me.

12 Now, at this time I need to excuse everyone in the
13 courtroom who was not cleared under the protective order so
14 that we can go into the private part of the proceeding.

15 And I'm going to direct my deputy courtroom clerk, turn
16 off any broadcast of this to anywhere. Turn off these overflow
17 courtroom cameras, everything. All right.

18 So let's -- my apologies to the public. This is going to
19 take about an hour, I think.

20 So go ahead. Please exit.

21 (Members of the public exit the courtroom.)

22 (Page 276, Line 1 through Page 309, Line 14 were
23 placed under seal by Order of the Court.)

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(Sealed proceedings concluded.)

THE COURT: All right. We will take a 15-minute break and come back and start hearing our first witness. Please remember the admonition. No talking about the case.

Thank you for your close attention. We'll see in you 15 minutes.

(Jury out at 11:20 a.m.)

THE COURT: Be seated. All right. We've got our first witness ready to go?

MR. VERHOEVEN: Yes, Your Honor.

THE COURT: All right. 15 minutes and we'll start.

1 **MR. VERHOEVEN:** I had one thing I want to raise --

2 **THE COURT:** Yes.

3 **MR. VERHOEVEN:** -- and I think that the jury may be
4 significantly confused about what a trade secret is because
5 counsel kept saying that it needs to be an invention and it
6 needs to be obvious, which is a patent, not a trade secret.

7 And so I'm concerned, if they don't have any guidance,
8 that they're going to think that trade secrets need to be like
9 inventions.

10 And my suggestion is that there's some sort of preliminary
11 instruction as to what a trade secret is so that they can have
12 that understanding, because right now the statement is -- the
13 language that was used was patent language -- invention, novel,
14 obviousness -- not the trade secret standard, which is has
15 economic value, not generally known, and you maintain its
16 secrecy.

17 So I'm a little concerned about that, Your Honor.

18 **MR. CARMODY:** The short comeback, of course, Your
19 Honor, is a trade secret is novel. If it was in the public
20 realm, it wouldn't be a secret. But that can all be cured.

21 Listen, there was not an objection, but, you know, even if
22 there was, this is something that is going to be cured, if I
23 did something wrong, which I didn't, in the Court's
24 instructions to the jury.

25 **THE COURT:** Well, it may be wise to give some kind of

1 preliminary instruction as we go along.

2 Can't you two agree on a paragraph that would explain the
3 difference between patents and trade secrets?

4 **MR. VERHOEVEN:** I'm sure we can, Your Honor.

5 **MR. CARMODY:** I would like to use the Court's. I
6 mean, I thought what you did was the best. And I would say if
7 you want to give that to them preliminarily. A while back in
8 your penultimate jury instructions you hit that.

9 **THE COURT:** I don't think I had anything about patents
10 in there.

11 **MR. CARMODY:** No, but I mean in terms of explaining
12 what a trade secret is. It's right there.

13 **THE COURT:** But I'm saying, we need to also
14 distinguish between trade secrets and patents. That's your
15 point.

16 **MR. VERHOEVEN:** Yes. And remember from the jury
17 selection voir dire one of the people thought that trade
18 secrets were patents.

19 So when we start using language like novelty and
20 invention, that is not the things that -- if you read the
21 instructions, those are not the standards of trade secrets.
22 Doesn't have economic value. It is not generally known. And
23 do you take reasonable steps to keep it confidential?

24 And so the standard for something being an invention is
25 much more significant. And I think it's important for the

jurors to know that that's a different thing in order so they're not confused.

THE COURT: I'm inviting you both to meet and confer and come up with a -- otherwise I have to do it myself.

MR. CARMODY: We will do so.

THE COURT: And I do think it needs to be explained to the jury in due course. I don't think it's an emergency item.

All right. So when I come back, we'll call our first witness.

MR. VERHOEVEN: Thank you, Your Honor.

(Recess taken at 11:23 a.m.)

(Proceedings resumed at 11:38 a.m.)

(The following proceedings were held in open court,
outside the presence of the jury:)

THE COURT: All right. Be seated, please. Thank you.

Ready to go back to work?

MR. VERHOEVEN: Yes, Your Honor.

THE COURT: I apologize. I don't know why I can't get them to turn the air -- have you told --

THE CLERK: Yes.

THE COURT: I'm going to issue a court order --

(Laughter)

THE COURT: -- to the GSA and have them come and stand right there and explain to me why it's 82 degrees in here.

Okay. Is Waymo ready to present its first witness?

1 **MR. VERHOEVEN:** We are. Just point of order, to make
2 sure we have the sequestration rule in effect.

3 **THE COURT:** What do you mean sequestration?

4 **MR. VERHOEVEN:** Any percipient witnesses.

5 **THE COURT:** Oh. All right. So anybody who is a
6 witness in the case --

7 **MR. VERHOEVEN:** For Uber.

8 **THE COURT:** Well, even for your side.

9 **MR. VERHOEVEN:** Yes, that too.

10 **THE COURT:** Both sides have got to exit stage left,
11 except for the courtroom representatives.

12 Okay.

13 **MR. GONZÁLEZ:** Your Honor, just briefly, I want to put
14 an agreement on the record. The video that we had concerns
15 about, that they played in opening, we've agreed to withdraw
16 our objection to that video, which I believe is Exhibit 10261.
17 In exchange, Waymo has agreed to withdraw Exhibit 10260 and are
18 not offering it in evidence at the trial.

19 **THE COURT:** Agreed?

20 **MR. VERHOEVEN:** Agreed.

21 **THE COURT:** Okay. Problem solved.

22 Let's bring our jury in --

23 **MR. VERHOEVEN:** Took a while.

24 **THE COURT:** -- we'll get started.

25 We're back on the public session. We're going to turn

1 back on these cameras to the overflow room. I think people are
2 over there. That's what I'm told. I don't know that for
3 certain, but we'll turn the cameras back on and bring in our
4 jury so we can call the first witness.

5 While that's happening, for those of you out there -- and
6 this is a high-tech case, but here's what I do up here. One of
7 my few jobs. I keep a column of witnesses and how much time
8 each side uses. Just an old-fashioned pencil-and-paper thing.
9 And then when they run out of time, they run out of time. And
10 that's -- isn't that great in a high-tech case like this, this
11 ole pencil comes in handy. Even has an eraser.

12 All right.

13 **THE CLERK:** All rise for the jury.

14 (Jury enters at 11:41 a.m.)

15 **THE COURT:** Okay. Great. I see you're all in order.
16 Welcome back. Be seated.

17 And now we're going to start with the evidence.

18 I want you to know both sides have a certain amount of
19 evidence time. I keep track of it myself, to the minute. And
20 when they run out of time, they run out of time.

21 So this is encouraging both sides to be efficient in their
22 use of your time, which is very important to us. But they both
23 have agreed that the allocations are fair. There is some
24 outside chance we would end the case by the end of next week,
25 but it could go into the following week. And then we'd have

1 the arguments and all that.

2 So I -- we're not even close to a point where I can see
3 the -- we're just starting on the time.

4 So you're going to get absorbed into the evidence. It
5 will be most interesting to you.

6 At this time Waymo gets to call its first witness. Please
7 do so.

8 **MR. VERHOEVEN:** Thank you, Your Honor. Waymo calls
9 John Krafcik.

10 **THE COURT:** All right. Wonderful. Please stand
11 somewhere in there and raise your right hand. The clerk will
12 swear you in.

13 JOHN KRAFCIK,
14 called as a witness for the Plaintiff, having been duly sworn,
15 testified as follows:

16 **THE COURT:** Great. Have a seat. And --

17 **THE WITNESS:** I'm John Krafcik. It's K-R-A-F, like
18 Frank, C-I-K.

19 **THE COURT:** K-R-A -- say it again.

20 **THE WITNESS:** F, like Frank, C-I-K.

21 **THE COURT:** C-I-K. All right. And welcome to you.
22 And you need to keep your voice about this close to the mic so
23 everyone out there can hear you. And if anybody on the jury
24 ever gets to the point where you cannot hear, raise your hand
25 so I can make sure we cure that.

1 All right. Mr. Verhoeven, the floor is all yours.

2 **MR. VERHOEVEN:** Thank you, Your Honor.

3 **DIRECT EXAMINATION**

4 **BY MR. VERHOEVEN:**

5 **Q.** Good morning, Mr. Krafcik.

6 **A.** Good morning.

7 **Q.** Would you please introduce yourself to the jury?

8 **A.** I'm John Krafcik. I am the CEO of Waymo. And I joined
9 Google in September 2015, to lead the self-driving car project.

10 **Q.** And can you explain to the jury, what is Waymo?

11 **A.** So Waymo is sort of an independent entity within a company
12 called Alphabet, which is Google's parent company now.

13 Our mission in the world is to bring self-driving cars to
14 fruition so that people and things can move around safely and
15 easily.

16 **Q.** Do you have an understanding as to when Google began
17 working on self-driving cars?

18 **A.** Yeah. It was around 2009.

19 **Q.** Okay. And when did it become -- and this was the
20 Chauffeur program; is that correct?

21 **A.** It started as the Chauffeur program, yeah.

22 **Q.** When did it become Waymo?

23 **A.** It became Waymo at the start of 2017. So January 1st,
24 2017.

25 **Q.** When did you join Waymo?

1 **A.** So I joined the Google self-driving car project, before it
2 was actually called Waymo, on September 28th, 2015.

3 **Q.** So you haven't been there from 2009 up to that point;
4 right?

5 **A.** Correct, yeah. I joined in 2015.

6 **Q.** Okay. What was your occupation before Waymo?

7 **A.** So just before Waymo, I was the president of a company
8 called TrueCar. TrueCar, I think of as a car buyer platform
9 that brings car buyers and car dealers together to find a fair
10 price.

11 **Q.** And before that?

12 **A.** Prior to that, I worked at Hyundai, Hyundai Motor America,
13 for ten years. I was the CEO of the U.S. Hyundai operations
14 for about five years, and prior to that I was the guy in charge
15 of product planning and pricing and strategy for Hyundai in the
16 U.S.

17 **Q.** And could you summarize for the jury your education,
18 please, sir?

19 **A.** Yeah. I have a B.S. in mechanical engineering from
20 Stanford. And I got a management degree from MIT Sloan School.

21 **Q.** Do you have any focus within mechanical engineering?

22 **A.** I would describe myself as sort of a broad mechanical
23 engineer.

24 **Q.** All right. Seems like you've been in the car industry for
25 your whole career?

1 **A.** Yeah. Sort of hate to admit how long it's been. It's
2 going on three decades.

3 **Q.** Why is that, sir?

4 **A.** I grew up in a big family. I was the eighth of eight
5 kids, five older brothers. My dad was a tool and die maker. I
6 have been fascinated with cars since I was about two years old.
7 Sort of always knew I would be in this space.

8 **Q.** What's the first car you bought?

9 **A.** Interesting story. First car I bought with my own money
10 was a 1973 Ford Capri. I bought it when I was living in
11 Connecticut and moving out to Stanford. So I drove it across
12 the country way back when in 1979.

13 And I think I bought it for \$1,200. Sold it after I
14 graduated from Stanford for \$1,500. And I ended up putting
15 150,000 miles on that car.

16 **Q.** Sounds like good.

17 Can you tell the jury what led you to take the job at
18 Waymo?

19 **A.** Yeah. So I saw this as a great opportunity. Sort of a
20 once-in-a-lifetime opportunity.

21 Before Hyundai, I was a chief engineer at Ford. I worked
22 at Ford for 14 years. The last seven of those years I was
23 chief engineer for cars like the Ford Expedition and the
24 Lincoln Navigator. And I learned sometime during my experience
25 at Ford what I wanted to do with my life. And it came down to

1 figuring out a way for people to be safe in their cars. And
2 I've always been motivated personally by figuring out a way to
3 reduce fatalities in this space.

4 So at Ford I did it by using technologies like antilock
5 braking systems, electronic stability control, side-impact air
6 bags, and putting them on our SUVs.

7 And when I got to Hyundai, the idea there, they were
8 selling inexpensive cars, and the theme that I had was let's
9 put all of that safety equipment on all of our cars, even our
10 inexpensive \$10,000 Hyundai Accents. And so we helped move the
11 industry in safety with moves like that.

12 That ended up being a really inspirational part of my
13 life.

14 So when Google reached out to me with this opportunity to
15 work on this amazing technology, it was really interesting to
16 me because the statistics out there are pretty interesting. If
17 you look at all the people who die in car crashes every year,
18 it's about 35,000 in the U.S. It's 1.2 million globally.
19 That's like a 737, a big airplane, with 140 people on it
20 crashing every hour of every day and everyone dying on that
21 plane. That's how many people die in car crashes.

22 The idea that what Google was doing, before it became
23 Waymo, of taking the human element out of those crashes,
24 because humans are responsible for about 94 percent of those
25 fatalities; it's human error. The idea that we could fix this

1 with our technology so that so many people wouldn't die was
2 incredibly appealing. That was my inspiration to come.

3 **MR. VERHOEVEN:** Can we put up on the screen
4 Slide WDX22.

5 Can you see that, members of the jury?

6 **BY MR. VERHOEVEN:**

7 **Q.** Okay. What are we looking at there, Mr. Krafcik?

8 **A.** Yeah, that is our current self-driving car. It's a
9 Chrysler Pacifica. It's a plug-in hybrid. And you can see on
10 top of the car it's got some interesting sensors. There's a
11 big LiDAR in a camera dome on top of that car. And you can see
12 other LiDAR on the side and in front of the car.

13 So that's the car that we've been working on that can make
14 its way around the world all by itself without a human driver.

15 **Q.** And I know -- I don't want to get into too deep in the
16 science, but can you summarize how does it do that? How do the
17 Waymo cars -- or how are they able to drive themselves? What
18 are the general things they're doing?

19 **A.** In very high level, the first thing the car needs to
20 figure out, just like we humans, is where are we in the world?
21 So we have really detailed maps, HD maps that we create using
22 our LiDAR. And that places the car in an exact spot in the
23 world.

24 And so we know all the stationary objects. And then with
25 those sensors we have cameras and radar and LiDAR. We're

1 picking up all the other objects that might be moving about
2 that weren't in the map. Things like people, pedestrians,
3 bicyclists, other cars. That helps us understand where those
4 things are that we shouldn't run into.

5 And then with the really great computer that's in the car,
6 we plot our way through the world. We calculate a path through
7 the world that's designed to avoid any and all of those
8 obstacles to get you from Point A to Point B.

9 **Q.** And how does LiDAR work?

10 **A.** LiDAR, it's rather complicated technology, but you can
11 think of it as something that's throwing out beams of light,
12 photons. And once it sees an object, those photons come back,
13 they bounce back to the radar, or to the LiDAR. And with that
14 we can figure out precisely how far away objects are. We can
15 paint the world with these beams of light and figure out where
16 everything is very precisely.

17 **Q.** Okay. How does Waymo ensure that its cars are safe so
18 that there's no human being driving them?

19 **A.** Yeah. It's the thing that we're most focused on. We're
20 driven by safety at Waymo.

21 So there's a lot. First of all, I mentioned the LiDAR.
22 We have six different LiDARs. That LiDAR paints 360 degrees
23 all the way around the car. We have radar, which six different
24 radars, which are also looking 360 degrees around the car. And
25 a total of 19 different cameras that are also painting the

1 world with a 360-degree view of the world.

2 Those three sensing modalities give us a lot of overlap
3 and redundancy, so if there's a problem with one, we can use
4 the others.

5 As I mentioned, we have a really big computer with a lot
6 of computer power to help us process all that information that
7 comes through the sensors.

8 Then we go an extra step further by putting redundancies
9 into that base Chrysler Pacifica platform. So, for example, we
10 have a redundant steering system in that car in case something
11 goes wrong with the main steering system, and we have a
12 redundant braking system in case something goes wrong with the
13 primary brake system. So there's always a backup.

14 **Q.** Do you have an understanding of how many miles Waymo has
15 driven and tested its vehicles?

16 **A.** All totaled on real roads in what we call autonomous mode,
17 over 4 million miles so far. Those real-world miles are super
18 important. We do a lot more miles, though, in what we call
19 simulation. Sort of think of it as in the cloud, driving in
20 the cloud.

21 Last year, in 2017, we drove 2.7 billion miles. So we
22 take that combination of real-world miles, we make those
23 real-world scenarios that we run into even more complicated and
24 interesting, and then we test our cars and software in the
25 cloud for billions and billions of miles to make sure that it's

1 very, very safe.

2 Q. Are you confident that Waymo's cars are safe?

3 A. I'm very confident.

4 Q. Do you have any children?

5 A. I do. I have two.

6 Q. Can you tell the jury a little bit about them?

7 A. My son -- my son, Alex, I like to refer to him as a
8 younger, better-looking version of me. He's 25. He works for
9 Tesla.

10 My daughter, Onika (phonetic) is 20. She is a music,
11 history, and Russian major at Oberlin College. And, yeah,
12 she's the light of my life too. Two great kids.

13 Q. Would you put those kids in a driverless Waymo car?

14 A. Absolutely.

15 Q. Tell us about the status or state of Google when you took
16 over and then went into the CEO position at Waymo in 2015.

17 A. Yeah. It was -- it was an interesting time. So, again,
18 we're back in September 2015. The project had been underway
19 roughly six years. It had made really important pivotal
20 advances in advancing the art of self-driving car technology.

21 And it was time, and I think Larry Page and Sergey Brin
22 saw the opportunity, to now move the project from what was like
23 an R&D project to a commercial project, a project that could
24 really help the world by getting those self-driving cars out
25 there to make a difference.

1 And I think that's one of the reasons they were interested
2 in me. I was someone who had run large businesses at scale.
3 We built a lot of cars at Ford. We built a lot of cars at
4 Hyundai. I had some sense of what we needed to do in terms of
5 partnership but also something you called scaling, building a
6 big business, to get this thing ready to bring our technology
7 to the world.

8 **Q.** And just generally, what have you been doing since
9 joining?

10 **A.** Pretty much that. So we've certainly grown the company a
11 lot. We've hired hundreds of engineers because it is a very
12 difficult problem. We're getting better and better. We've
13 advanced the technology since I have joined. A whole evolution
14 of hardware at this point.

15 We've signed partnership deals with companies like
16 Chrysler and others to help us bring this technology to market.
17 We even have partnerships now with companies like Avis and
18 AutoNation, because we have to figure out how are we going to
19 keep these cars maintained when they're out in the world? And
20 there are lots of other great companies out there who are very,
21 very good at that.

22 **Q.** I'm going to show you a video, the one I showed in my
23 opening statement. And I'm going to ask you to just walk
24 through, and I will be going pretty fast, so walk through and
25 just kind of explain to the jury what they're looking at.

1 **MR. VERHOEVEN:** For the record, Your Honor, this is
2 from the pilot program in Arizona.

3 (Video played while witness testified as follows:)

4 **THE WITNESS:** Yes. So this is a pretty important day
5 for us. So we actually did -- this day was in October of 2017.
6 And we put three different Chrysler Pacifica self-driving cars
7 on the road in a suburb of Phoenix and had all three of those
8 cars driving together through the world without any humans in
9 the front row.

10 The cars were completely driven by Waymo technology, the
11 computers and the sensors.

12 These are -- these are Waymo employees in the car.

13 **BY MR. VERHOEVEN:**

14 **Q.** That says Waymo 1?

15 **A.** Yeah. We had three different cars. There's Waymo 1. And
16 you can get -- on the right-hand side you can see the screen is
17 split, with three different groups of Waymo employees.

18 There's Car 2, and Car 3 behind it.

19 And they're each taking different routes, after we got
20 started, to different endpoints in this community in Phoenix.

21 **Q.** So that's Waymo 1?

22 **A.** There's Waymo 1.

23 **Q.** What's that in the middle on the right?

24 **A.** So that's -- that in-car display is what you would see if
25 you were in the backseat. So those close to the second row have

1 access to the screen. This shows what the car is seeing in the
2 world. We try to give the folks in the second row an
3 indication of what it is the car sees so they can feel safe.

4 **Q.** That's Car 3.

5 Back to Car 1?

6 **A.** Back to Car 1. Here we are entering an intersection. So
7 the car is picking up the traffic signals. Waiting, of course,
8 for it to turn green.

9 So Waymo 1, the first car, has finished its ride.

10 **Q.** What's this here?

11 **A.** This is our depot in Phoenix. So this gives you an
12 indication. I mentioned scaling; right? We're going to need a
13 lot of cars. That gave you a look at our primary depot in
14 Phoenix, which has room to hold literally hundreds of cars so
15 that we can serve that city.

16 **Q.** Thank you, sir.

17 Can we go to Slide WDX2-3.

18 Now, again, just for the record, what is Project Chauffeur
19 or what was it?

20 **A.** Yeah. So when the project started, they came up with this
21 name "Chauffeur." Was sort of a clever name, I guess, for a
22 self-driving car company. But this is the very early days of
23 that project.

24 **Q.** And what are we looking at here? Who are these people?

25 **A.** Looks like some of the early members. You can see Chris

1 Urmson on the left, Jiajun, and Dmitri Dolgov, that's Standard
2 Chatter (phonetic), and then Anthony Levandowski on the far
3 right.

4 **Q.** So Anthony is on the far right with the hat on?

5 **A.** Yes.

6 **Q.** Okay. Have you met Mr. Levandowski?

7 **A.** I have.

8 **Q.** What was his title when you arrived at Waymo?

9 **A.** He was leading the LiDAR team at that time.

10 **Q.** What was your impression of him?

11 **A.** I have to say he was an interesting character. You know,
12 he had -- he had done a lot of things prior to my arriving at
13 what was then Chauffeur, the Google self-driving car project.

14 And as I did with a lot of these folks on the screen here
15 and elsewhere on the team, as the new guy, the new CEO of this
16 project, I sought to learn a little bit about each of these
17 people so I could figure out, you know, what was a good place
18 for them to be, what might be a good development path for them,
19 that sort of thing.

20 **Q.** When you were working with Mr. Levandowski, did he ever
21 express dissatisfaction with the program or his job?

22 **A.** I think it's fair to say about Anthony that he always had
23 this little bit of disappointment. Right? Not necessarily a
24 bad thing. Something that would drive anyone to want to do
25 more and do better. That's fair.

1 **Q.** Do you remember him sending an email saying, "Chauffeur is
2 broken and we need to speed things up"?

3 **A.** I have seen that email, but he didn't -- he didn't send
4 that one to me.

5 **Q.** Okay. Did he tell you things that basically that he
6 thought the program was broken and what needed to be done?

7 **A.** He had indicated from time to time the sorts of things
8 that he might be interested in in doing that were different,
9 perhaps, than what others on the project were thinking.

10 I think that's fairly common. And that was one of my jobs
11 coming in, what was the right direction for the project and
12 where should we take things.

13 **Q.** Did you agree with -- I assume he discussed some of those
14 with you?

15 **A.** We did, yeah. We talked about some things.

16 **Q.** Did you agree with all of what he was saying or disagree
17 with some and agree with others?

18 **A.** I think it's fair to say there were some things that made
19 sense and some things that were clearly wrong. It's -- it
20 might be one way to summarize Anthony's perspective at this
21 time as I was seeing it was, and maybe you've heard this phrase
22 before, "Move Fast and Break Things."

23 There are aspects of move fast that are really great. The
24 break things part is very challenging when you're dealing with
25 a car and people's lives. And that's where we had some

1 challenges.

2 **Q.** Did he want -- well, did you have the same view of safety
3 as he did?

4 **A.** I think it's fair to say we had different points of view
5 on safety, yeah.

6 **Q.** Can you give me a couple of examples?

7 **A.** Sure. We were -- we were introducing the Pacifica. And I
8 mentioned we put redundant steering and braking systems just in
9 case something went wrong with the primary systems. Anthony
10 had a strong point of view that we didn't need those
11 redundancies. I couldn't imagine putting a car on the road
12 without that level of redundancy, knowing the issues that can
13 happen with a steering system or a braking system.

14 **Q.** Did you ever hear any rumors that Mr. Levandowski was
15 going to move to Uber while he was working there?

16 **A.** I never heard anything directly from Anthony. There was
17 an investigation that was done, I understand, before I arrived,
18 that looked at that or questioned that.

19 **Q.** And do you know what the result of that was?

20 **MR. CARMODY:** Your Honor, at this point, he wasn't
21 there. It's hearsay.

22 **THE COURT:** Sustained.

23 **BY MR. VERHOEVEN:**

24 **Q.** Okay. During the time you were there -- well, let me back
25 up.

1 Did Mr. Levandowski resign from Waymo?

2 **A.** He did.

3 **Q.** Did he give notice?

4 **A.** Not to me.

5 **Q.** Okay. How did you learn that he had quit?

6 **A.** I remember that day. I remember that day very well. I
7 was in a meeting with a couple of my teammates. And I got an
8 email from Larry Page saying something like Anthony had just
9 resigned.

10 **Q.** What was your reaction?

11 **A.** Oh, complete surprise.

12 **Q.** And why is that?

13 **A.** As I had mentioned, Anthony was someone I was trying to
14 get to know and understand. And we had had discussions in the
15 days before this day. And, you know, he didn't mention
16 anything like this.

17 **Q.** Okay. What did you do when you learned he had resigned?

18 Did you do anything?

19 **A.** There was a lot going on this morning -- or that
20 particular morning.

21 We understood that he was still there. And I had had a
22 10:30 appointment on my calendar with him. So my expectation
23 was I would be able to catch up with him at that time, at
24 10:30.

25 But between finding out and that 10:30 time slot, I went

1 on with the meetings that I had that morning.

2 **Q.** Did you attempt to speak to Mr. Levandowski on the day he
3 was there, when he resigned?

4 **A.** I did, yeah.

5 **Q.** Did you reach him?

6 **A.** Yeah, we ended up talking by phone around lunchtime.

7 **Q.** Do you have a recollection of the conversation?

8 **A.** It's vivid, yeah.

9 **Q.** Okay. Can you describe that conversation to the jury.

10 **A.** Yes. So we connected by phone. And my -- you know, the
11 first words out of my mouth were something like --

12 **MR. CARMODY:** Your Honor, I was letting a little of
13 this go. This is hearsay. It's recounting a conversation with
14 Anthony Levandowski.

15 **THE COURT:** That's true.

16 What's your answer to that?

17 **MR. VERHOEVEN:** My answer to that is unavailability,
18 Your Honor.

19 **THE COURT:** Sustained.

20 **MR. VERHOEVEN:** He was also working for the defendant
21 Ottomotto at the same time.

22 **MR. CARMODY:** He wasn't, actually.

23 **THE COURT:** Well, apparently he had already resigned.
24 So that won't work.

25 **MR. VERHOEVEN:** I offer it for state of mind of

1 Mr. Krafcik and what he was told about what was going to
2 happen.

3 **MR. CARMODY:** Mr. Krafcik's state of mind isn't
4 relevant, Your Honor.

5 **THE COURT:** This is one where I will have to hear the
6 proffer out of the presence of the jury and let you know
7 afterwards. You have to move to something else. We'll deal
8 with it later. But possibly it comes in to prove up the
9 transaction.

10 **MR. VERHOEVEN:** Thank you, Your Honor.

11 **BY MR. VERHOEVEN:**

12 **Q.** Did you keep in touch with Mr. Levandowski after he
13 resigned?

14 **A.** I did, absolutely.

15 **Q.** And, just generally, without talking about substance, what
16 did you -- what was the nature of your communications?

17 **A.** We had occasional text messages, just trying to figure out
18 what it was that he was really up to.

19 **Q.** And what was your purpose in communicating with him?

20 **A.** We didn't have a good sense of what he was doing.

21 At this point, based on the disappointment that I had
22 personally felt when he left without telling me, my perspective
23 on him shifted rather considerably. And he had gone from
24 someone who I had considered a friend to someone who I
25 considered an enemy. I needed to understand what he was doing.

1 I felt like I was following that old song you might have heard,
2 "Keep your friends close and your enemies closer." We needed
3 to understand what he was doing, so I maintained that
4 relationship.

5 **Q.** Did you have any meetings with Mr. Kalanick in the summer
6 of 2016?

7 **A.** We did.

8 **Q.** And do you remember when the meeting was?

9 **A.** It was summer. It was before news of the acquisition had
10 broke.

11 **Q.** And the purpose of the meeting?

12 **A.** Discussing -- broadly speaking, discussing partnership
13 opportunities.

14 **Q.** And who did you meet with?

15 **A.** Travis Kalanick and Neel Michael, their business
16 development lead. David Drummond and I joined on the Waymo
17 Google side.

18 **Q.** Can you describe what happened at that meeting?

19 **A.** There was a lot of just general discussion. It felt, you
20 know, honestly, fairly empty. And I don't have a total
21 recollection of everything that we discussed, but I do remember
22 one thing very vividly, because, at the time, it didn't seem in
23 context or apropos of anything else that was said.

24 He said -- this is Travis Kalanick -- "You know, we don't
25 give up 1 percent of the company lightly," something like that.

1 And that didn't make any sense to me at the time. But
2 later in the summer, after the acquisition came out and the
3 purchase price of Otto was shown to be about 1 percent of Uber,
4 it suddenly made sense that he had had that thought on his mind
5 in the context of our own partnership discussion.

6 **Q.** Did he tell you during the meeting that he had already
7 acquired Ottomotto?

8 **A.** No, of course not.

9 **Q.** Did he say anything about Mr. Levandowski?

10 **A.** No.

11 **Q.** Let's talk for a second, in conclusion, about why we're
12 here. Why did Waymo file this lawsuit?

13 **A.** So we believe in competition. We believe in fair
14 competition. We believe in accelerating the technology that's
15 going to help save a lot of lives in this world.

16 What we came to find was that aspects of our technology
17 were taken from us in an unfair fashion. And it was important
18 for us to correct that.

19 **Q.** Did you call Uber before you filed a lawsuit?

20 **A.** I did not.

21 **Q.** And why not?

22 **A.** If you had been in that room weeks before the Uber Otto
23 acquisition and the guy across the table doesn't talk anything
24 at all about this and talks about partnership, there just
25 wasn't that level of trust there. We didn't have that sort of

1 relationship.

2 **MR. VERHOEVEN:** Thank you, Your Honor. I'll pass the
3 witness.

4 **THE COURT:** Cross-examination.

5 **MR. CARMODY:** Thank you, Your Honor.

6 **CROSS-EXAMINATION**

7 **BY MR. CARMODY:**

8 **Q.** Good afternoon, sir.

9 **A.** Hello.

10 **THE COURT:** May I suggest that you use the --

11 **MR. CARMODY:** Yes.

12 **THE COURT:** -- the other one there so that you will be
13 closer to the witness.

14 **MR. CARMODY:** I like that idea. Thank you, Your
15 Honor.

16 **BY MR. CARMODY:**

17 **Q.** Sir, I clocked you about a minute and half ago talking
18 about that meeting you had in the summer, in July of 2016,
19 where you -- I think your words were "No, of course not," that
20 Otto wasn't mentioned and Anthony Levandowski wasn't mentioned.
21 Did I hear you correctly?

22 **THE COURT:** May I ask you to move the mic so it will
23 catch your voice a little better. Thank you.

24 **BY MR. CARMODY:**

25 **Q.** Did I hear you correctly?

1 **A.** That's right.

2 **Q.** Let's go to your sworn testimony, your deposition.

3 **MR. CARMODY:** I'm reading in, Your Honor, page 251,
4 lines 14 through 19:

5 "And did the name Anthony Levandowski come up during
6 this meeting at all?

7 "Possibly. I don't -- I don't remember.

8 "Did Otto come up at all during this meeting at all?

9 "Again, possible. I don't -- I don't remember."

10 Now, sir --

11 **THE COURT:** Wait, wait. Let me explain to the jury.

12 In preparing a case like this for trial, both sides get
13 the opportunity to ask for documents from the other side. And,
14 for that matter, from people not even involved in the lawsuit.
15 They also get to take what are called depositions, where
16 witnesses come, they take an oath to tell the truth, and a
17 court reporter like the one we have here takes it all down and
18 it gets transcribed into a booklet. And then these are
19 available, subject to the rules of evidence, to be used at
20 trial.

21 So to speed things along, one of the ways I allow lawyers
22 to do what Mr. Carmody did, he can read exactly -- and it has
23 to be exactly -- what was in the deposition. Question, then
24 answer, question, and then answer.

25 And did you do that, Mr. Carmody? Was it read exactly?

1 **MR. CARMODY:** I did my best, Your Honor. If I missed
2 a word, I apologize. I don't think I missed a word.

3 **THE COURT:** Okay. So then that is -- I told you what
4 the lawyers say is never evidence. This is an exception. It
5 just moves it along. And he has to read it exactly that way,
6 no spin, no nothing, exactly. So you can take into account
7 what you just heard as prior testimony of the witness on the
8 stand.

9 Thank you. Please proceed.

10 **MR. CARMODY:** Thank you, Your Honor.

11 **BY MR. CARMODY:**

12 **Q.** And, by the way, sir, when you swore at your deposition,
13 that was about six months ago; correct?

14 **A.** I don't recall specifically. Sounds about right, yeah.

15 **Q.** At a time when it was closer to the meeting you were
16 testifying about; fair?

17 **A.** Fair.

18 **Q.** Okay. Now, let's talk together about when you joined.
19 You talked with your counsel about the status of affairs when
20 you joined.

21 Let's look together at Exhibit 1249, please. Should be in
22 your book.

23 **A.** This one?

24 **Q.** Yes.

25 **A.** Okay.

1 Q. We see here --

2 MR. CARMODY: Do you have it on the big screen?

3 Exhibit 1249 is agreed to that it's admitted, Your Honor.

4 THE COURT: All right. 1249 is in evidence. Please
5 put it up on the screen.

6 (Trial Exhibit 1249 received in evidence.)

7 (Document displayed.)

8 THE COURT: Now, I'm going to let the public see it.
9 Everybody sees it. 1249 is in.

10 MR. CARMODY: Yes, sir.

11 THE COURT: Okay. What's the question?

12 BY MR. CARMODY:

13 Q. The question is, sir, we're looking together at an email
14 that you received from a gentleman by the name Astro Teller;
15 correct?

16 A. Correct.

17 Q. Let's talk about who he is first. Quickly, he is a
18 scientist and he is then the head of Google X; correct?

19 A. That's correct.

20 Q. Which Chauffeur was a part of then; correct?

21 A. Not at that time, but prior to.

22 Q. Okay. And you're a new employee at the time. You're
23 about 60 days into your job; is that fair?

24 A. That's right.

25 Q. Okay. And so what we see here is Astro Teller sending you

1 this email, and he's also sending it to Chris Urmson. You were
2 here for opening statement; correct?

3 **A.** Correct.

4 **Q.** And Chris Urmson was your kind of predecessor, kind of
5 running Chauffeur; fair?

6 **A.** Yes.

7 **Q.** Okay. And now here's what he says: He says, "Hey, guys.
8 Larry" -- and he's referring to Larry Page; correct?

9 **A.** Almost certainly.

10 **Q.** -- "was talking to me about Anthony and wondering what the
11 chances are if we lose him and wondering if there is any way it
12 still makes sense for us to keep Anthony with us and engaged."

13 Correct?

14 **A.** Yeah, I can see that he wrote that.

15 **Q.** Okay. And then we have him talking about, "I think Larry
16 is just worried about helping the competition."

17 Correct?

18 **A.** Yeah. I can see Astro wrote that, uh-huh.

19 **Q.** And that was your understanding at the time of what
20 Larry Page believed; correct?

21 **A.** I don't know that that's necessarily fair to say. I can
22 see that Astro said that, though, yeah.

23 **Q.** Come on. In real life, when you get this email, are you
24 doubting when the guy above you, Astro Teller, is telling you
25 what Larry Page is thinking, are you having some doubts? I

1 mean, are you sending him back an email saying, "Whoa. Are you
2 kidding? I mean, why is Larry so concerned?"

3 Did that happen?

4 **A.** Well, I think one of the reasons Larry brought me to the
5 project was to make an assessment of the situation and how we
6 could move the project forward to commercialization, yeah.

7 **Q.** My question again, when you're told -- and is Astro Teller
8 a little higher up on the food chain than you?

9 **A.** No. Same.

10 **Q.** You're 60 days in your job, and you hear from him that
11 Larry Page is just worried about helping the competition.

12 My question is, putting yourself back there at that point
13 in time, did you take that statement as true?

14 **A.** I think I took that statement as I need to understand more
15 about Anthony myself so that I could make a judgment.

16 **Q.** So you can't tell us now whether or not, when you received
17 that email, you thought that Larry Page was worried about
18 Anthony Levandowski helping the competition?

19 **A.** I can just tell you how I responded to that, right.

20 **THE COURT:** No, no. Counsel is asking you a fair
21 question, and you're not quite answering it.

22 Ask it again, and give him a direct yes-or-no answer.

23 Ask the question again.

24 **BY MR. CARMODY:**

25 **Q.** Sir, when you received this email that's up on the big

1 screen right now, Exhibit 1249, and we have Astro telling --
2 Astro Teller telling you, "I think Larry is just worried about
3 Anthony helping the competition," is that a statement at the
4 time you believed to be accurate?

5 **THE COURT:** You can say yes or no and then explain.

6 **THE WITNESS:** I can say possibly. I wanted to learn
7 more. I am new in the role at this point.

8 **BY MR. CARMODY:**

9 **Q.** Sir, you personally believed, back in this November 2015
10 time, the time the email was written, that if Anthony
11 Levandowski left and worked for a Google competitor, that that
12 could certainly help Google's competition; correct?

13 **A.** That's true.

14 **Q.** Okay. And you knew Anthony Levandowski had a bonus of
15 \$120 million; correct?

16 **A.** I knew he had a large bonus potential, yeah.

17 **Q.** One-two-zero?

18 **A.** Correct.

19 **Q.** The biggest of anyone, I think you swore to, that you know
20 of at Google; right?

21 **A.** On the Chauffeur project, yes.

22 **Q.** Okie-doke.

23 Now, take a look at -- there is an email reference by
24 counsel.

25 **MR. CARMODY:** Let's put up 1898. Is that okay? We'll

1 offer 1898 into evidence.

2 **MR. VERHOEVEN:** We have no objection if foundation is
3 laid, Your Honor. No other objection.

4 **THE COURT:** 1898 subject to foundation. All right.

5 **BY MR. CARMODY:**

6 **Q.** Sir, if you take a look in your little book there, what
7 we're looking at here is an email that you received from
8 Larry Page; correct?

9 (Document displayed.)

10 **A.** It's three pages. So --

11 **Q.** 1898.

12 **A.** Oh, I'm sorry. I'm on the wrong -- my apologies. Yes.

13 **THE COURT:** It's in evidence. Foundation is
14 sufficient.

15 (Trial Exhibit 1898 received in evidence.)

16 **MR. CARMODY:** Okay.

17 **BY MR. CARMODY:**

18 **Q.** Now, let's take a look here. What we have is Larry Page
19 is forwarding you an email that he received from Anthony
20 Levandowski; correct?

21 **A.** That's correct.

22 **Q.** Larry Page also copies Google's -- his cofounder, Sergey
23 Brin; correct?

24 **A.** That's correct, yes.

25 **Q.** And it appears to me that he's kind of giving you some

1 insight of an email that he got from Anthony so you could see
2 it; correct?

3 **A.** He's forwarding it on to me, yeah.

4 **Q.** Okay. And to put things in context, then, we are in --
5 the date is January 9th of 2016; correct?

6 **A.** Correct.

7 **Q.** So when we look at the timeline, we're about three or so
8 weeks after Anthony Levandowski does these downloads; correct?

9 **A.** Yes.

10 **Q.** We're a couple of weeks before Anthony Levandowski leaves
11 Google; correct?

12 **A.** Correct.

13 **Q.** And he's going over your head to Larry Page; correct?

14 **A.** Yes.

15 **Q.** Okay. And when we take a look right there, it says --
16 under the "happy new year" thing it says "Chauffeur is broken";
17 correct?

18 **A.** Yeah, I see that he wrote that.

19 **Q.** And then we look further underneath that and we see,
20 "We're losing our tech advantage fast"; correct?

21 **A.** Yeah, I see that he wrote that.

22 **Q.** And below that, he writes that "part of our team seems to
23 be afraid to ship"; correct?

24 **A.** Yes, I see that he wrote that.

25 **Q.** And if we go further together, sir, in the second-to-last

1 paragraph, what we can see is, in the second sentence, he
2 writes that "John and I spoke about the above concerns."

3 And he's referring to you; correct?

4 **A.** He must be, yes.

5 **Q.** "But he" -- referring to you -- "seems focused on
6 executing the Ford deal"; correct?

7 **A.** I see that he said that, yes.

8 **Q.** And then what we see, sir --

9 **MR. CARMODY:** Go back. Can we highlight the subject
10 matter, it says, "Team Mac."

11 **BY MR. CARMODY**

12 **Q.** You know the old folklore of the Silicon Valley story
13 about Team Mac; correct?

14 **A.** I have come to learn that, yes.

15 **Q.** For all of our sake here, that was when Steve Jobs, the
16 Apple founder, was working at Apple. He was on Team Lisa.
17 They were developing a computer. He apparently had a little
18 mishap. He says, "I want to go start my own team." That was
19 Team Mac, and what came of that was the Macintosh; fair?

20 **A.** As far as I'm aware, yeah.

21 **Q.** And so what Anthony Levandowski is talking about and going
22 over your head to Larry Page about is wanting to do a Team Mac
23 within Google to compete basically against you and Chauffeur;
24 fair?

25 **A.** No idea.

1 **Q.** Okay. So you're telling us at the time when you're
2 looking at this -- I'm guessing -- you know, you're 60 days
3 into your job. You're -- wait, now you're probably 120 days
4 into your job. You got Anthony Levandowski going over your
5 head to Larry Page, you know, Mr. Big there. And you're not
6 sure -- I mean, you must have looked at this pretty closely at
7 the time; fair?

8 **A.** Yes. Fair.

9 **Q.** Okay. Did it concern you when Anthony Levandowski is
10 talking about starting a Team Mac to compete against you and a
11 little -- you know, Waymo that you were becoming CEO of? It
12 wasn't Waymo then, but you're the top dog; right?

13 **A.** Honestly, it's fair to say I didn't understand -- I
14 mentioned I came to know what Team Mac was. I think that
15 reference probably went over my head when I saw that.

16 **Q.** Okay. Now, you talked earlier with your own counsel about
17 when Anthony Levandowski left, you were kind of blindsided; he
18 was your enemy. Fair?

19 **A.** Yes.

20 **Q.** Okay. And I think the expression you used was "keep your
21 friends close; your enemies closer"; correct?

22 **A.** Yes.

23 **Q.** And what you did in terms of keeping your enemy close --
24 and let's be sure about this.

25 When Anthony Levandowski leaves Google, did you trust him?

1 **A.** I had grave doubts.

2 **Q.** Okay. Because we saw on the big screen in the opening
3 statement, it was 1642, where Larry Page was upset because
4 Anthony Levandowski was leaving the company and the leaders had
5 said -- didn't trust him.

6 Were you one of those leaders who didn't trust Anthony
7 Levandowski at the time he left?

8 **A.** Before he left, I was developing my own point of view. It
9 hadn't firmly cemented. I think it's fair to say, after he
10 left, yeah, I had gone into the camp of, holy cow, we can't
11 trust this guy.

12 **Q.** Okay. So to be fair about it, we have him leaving on
13 January 26 of 2016 -- maybe the 27th. I may be a day off.
14 Then he's your enemy. You don't trust him; correct?

15 **A.** Correct.

16 **Q.** Okay. But let me see if I have this right. You were
17 texting each other back and forth a whole lot; correct?

18 **A.** We had some texts back and forth, yeah.

19 **Q.** I clocked over a hundred of them. Does that sound about
20 right?

21 **A.** Yeah.

22 **Q.** Okay. You're talking to him on the phone; correct?

23 **A.** Maybe just the one time on the day that he left. I'm not
24 sure about other phone calls. It's possible.

25 **Q.** You went to dinner with him after he left?

1 **A.** I think we had a lunch, yeah.

2 **THE COURT:** Well, wait. He said you went to dinner
3 and you said, "We had a lunch, yes." You've got to -- he's
4 saying dinner. Are you saying dinner or lunch?

5 **THE WITNESS:** I believe it was lunch.

6 **THE COURT:** All right. So let's -- okay. Go ahead.

7 **BY MR. CARMODY:**

8 **Q.** So your testimony is you never had dinner with Anthony
9 Levandowski after he left Google? That's your testimony?

10 **A.** It's my recollection, correct.

11 **Q.** Can we take it to the bank, or are you saying that's your
12 recollection?

13 **A.** I remember having lunch with him at Five Guys, very
14 firmly, yeah.

15 **Q.** Okay. So we have you talking to him about the name of his
16 new company, which he calls Ottomotto; correct?

17 **A.** Or just Otto.

18 **Q.** Otto. You gave him the okie-doke, and you thought that
19 was a good idea?

20 **A.** We checked with folks at Google and thought, yeah, that
21 wouldn't be a problem.

22 **Q.** You referred Anthony Levandowski to a media consultant who
23 was your friend so that person can kind of keep tabs on Anthony
24 Levandowski; correct?

25 **A.** Be our consultant, correct.

1 **Q.** Okay. And, to be fair, but you don't consider Anthony
2 Levandowski to be your friend. He's your enemy; right?

3 **A.** Correct.

4 **Q.** And so you're doing all this to keep tabs on your enemy,
5 to keep your enemy close; right? And you're reporting the
6 results you get to Larry Page and Sergey Brin; correct?

7 **A.** Correct.

8 **Q.** Okay. Now, what I want to do is turn to Exhibit --

9 **MR. CARMODY:** Let's go to 1362, please.

10 We agreed it's admitted, 1362.

11 **THE COURT:** Agreed?

12 **MR. VERHOEVEN:** Yes, Your Honor.

13 **THE COURT:** All right. 1362 received in evidence.

14 Thank you.

15 (Trial Exhibit 1362 received in evidence.)

16 **BY MR. CARMODY:**

17 **Q.** Sir, are you -- take a look, please. You have 1362 handy?

18 **A.** I do.

19 **Q.** Wonderful.

20 Let's put it up on the big screen.

21 So what we're looking at here, let's start with the email
22 on the bottom. This is an email that you received from this
23 engineer named Dmitri Dolgov; correct?

24 **A.** Correct.

25 **Q.** And this is, you know, while you're on the job all of

1 about four months; correct?

2 **A.** Yes.

3 **Q.** And he's one of the senior engineers over at Google then;
4 fair?

5 **A.** Yeah.

6 **Q.** So what we see is, in the second line that says "So we
7 think."

8 **MR. CARMODY:** If you can highlight that, please,
9 Mrs. Foley.

10 **BY MR. CARMODY:**

11 **Q.** He's telling you, "As we think more about retention at
12 Chauffeur, here is some more accurate data on the three people
13 from the software team we just lost to competitors over the
14 last year." Do you see that?

15 **A.** I do, yes.

16 **Q.** And he's talking about trying to keep people and the fact
17 that folks are leaving; fair?

18 **A.** That's fair, yes.

19 **Q.** Okay. If we look to the very bottom under "of course,"
20 and he says, "But the competition right now is pretty fierce,
21 and there are companies" -- he says "there are several
22 companies (Tesla, Apple, Uber, Toyota) that are stalking our
23 folks, and they seem willing to burn a lot of cash to try to
24 catch up to us."

25 Did I read that accurately?

A. Yes.

Q. And was that something that was an accurate statement of fact at the time?

A. Yeah. The competition then was very keen for talent, and it remains so.

Q. And talent is a big deal in your business; fair?

A. Fair.

Q. Okay. And so you as CEO, you want to come in, you want to retain talent; correct?

A. Of course. Yes.

Q. Okay. And so we can look up top of the page now. We see yet another -- we see a quick response by you, and then we see Mr. Dolgov writing you yet another email on the subject of retention.

And this is just -- I mean, gosh, you're there less than four months; right?

A. Correct. Yeah.

Q. Okay. We see, "Yeah, the competition has been pretty ridiculous, especially since Uber started playing in this space."

And he goes on to talk about "The skill set of the people who work on the onboard stuff is very specialized, with a pretty small talent pool, so things will even get more cutthroat as the focus on L4 grows across the industry."

And he goes on to talk about "retention and hiring is the

1 number one priority for 2016"; correct?

2 **A.** Correct. Yes.

3 **Q.** And this is something that you were concerned about at the
4 time?

5 **A.** Certainly, yeah. Priority for a CEO would always be
6 making sure you've got good talent, holding on to that talent.

7 **Q.** And then a week later, if we take a look at the date,
8 Anthony Levandowski, within a week of this email, he's out the
9 door; correct?

10 **A.** Correct.

11 **Q.** And you told us he blindsided you; correct?

12 **A.** Yes.

13 **Q.** And it's fair to say that after Anthony Levandowski leaves
14 to do his start-up called Otto, other Google engineers are
15 leaving to join him; correct?

16 **A.** That's true.

17 **Q.** Okay. Now, take a look, 1907.

18 **THE COURT:** Are you offering it in evidence?

19 **MR. CARMODY:** Yes, I am.

20 **THE COURT:** Any objection to 1907?

21 **MR. VERHOEVEN:** One moment, Your Honor. I'm finding
22 it.

23 No objection.

24 **THE COURT:** Thank you. Received in evidence.

25 (Trial Exhibit 1907 received in evidence.)

1 (Document displayed.)

2 **BY MR. CARMODY:**

3 Q. So here we are looking at a little email string, sir. And
4 what's going on, if you take kind of a quick look here, we're
5 now -- we'll fast-forward a few months later, in July of 2016.
6 And what we have is word that Marlon is leaving; correct?

7 A. Correct.

8 Q. And he was kind of a top-notch laser guy that y'all liked
9 at Google; correct?

10 A. Yeah.

11 Q. Okay. And then you have -- and you're obviously
12 concerned; fair?

13 A. Uh-huh. Yeah. We described him as an ace, hands-on
14 technician.

15 Q. And this is kind of like this isn't just one or two.
16 We've got a lot of people over time walking out your door over
17 to Anthony Levandowski's Otto; fair?

18 A. Yeah. We definitely had some people moving to Otto, yes.

19 Q. And so what we have you doing is, if you take a look at
20 the email to the top, it's obviously concerning because you're
21 sending this and forwarding this to Sergey Brin, who is the
22 cofounder of Google. And he's way above your pay grade;
23 correct?

24 A. He's someone who I would interact with almost on a daily
25 basis, though, right.

1 **Q.** And what I see you tell him here is, "FYI, Sergey. We
2 lost another laser guy to Otto. This fellow was a ace hands-on
3 tech who we converted," and it goes on.

4 Accurate?

5 **A.** Yes.

6 **Q.** You didn't want to see him leave; correct?

7 **A.** Correct.

8 **Q.** And then we have here you're talking about the hiring
9 freeze over at Chauffeur, and you're saying, "Our hiring freeze
10 and the attractive self-driving car offers out there are
11 definitely impacting us."

12 Correct?

13 **A.** Yeah, that's what I wrote.

14 **Q.** It was making it tough for you in your job to retain the
15 good engineers you had; fair?

16 **A.** Fair.

17 **Q.** Okay.

18 **MR. CARMODY:** Next, 1131.

19 **THE COURT:** Any objection?

20 **MR. VERHOEVEN:** Here it is. No objection.

21 **THE COURT:** One more time on the number. I'm sorry.

22 **MR. CARMODY:** Excuse me, sir. 1131.

23 **THE COURT:** 1131 received in evidence.

24 (Trial Exhibit 1131 received in evidence.)

1 **BY MR. CARMODY:**

2 **Q.** So we're looking at, now, yet another kind of string with
3 a couple emails here. And we have yet another employee
4 leaving, Sameer; correct?

5 **A.** Correct.

6 **Q.** And Sameer again comes over to Anthony Levandowski's Otto;
7 correct?

8 **A.** Yes.

9 **Q.** And up top I can see you writing, "FYI, two more people to
10 Otto. Need a plan."

11 **A.** Right. That was Sameer and Marlon, yes.

12 **Q.** You're concerned, in fairness?

13 **A.** Uh-huh.

14 **Q.** You wanted to keep Sameer; correct?

15 **A.** Yeah.

16 **Q.** You wanted to keep Marlon?

17 **A.** We wanted to retain our people, for sure.

18 **Q.** Okay. And let's take a look now, sir, at 1648, please.

19 **MR. CARMODY:** Okay?

20 **MR. VERHOEVEN:** No objection.

21 **THE COURT:** Thank you. 1648?

22 (Trial Exhibit 1648 received in evidence.)

23 **MR. CARMODY:** Yes, Your Honor.

24 **BY MR. CARMODY:**

25 **Q.** Do you have that handy, sir?

1 **A.** I do.

2 **Q.** Let's start on the back, the last page. It's an email
3 string we're looking at. The first email in the chain first
4 chronologically. Okay?

5 It's from Dmitri Dolgov. And it's one that I showed parts
6 of in the opening statement. So we see him saying on the
7 bottom of the page, "One of the significant effects of today's
8 Otto Uber news is increased attrition risk for us." Correct?

9 **A.** Yeah, correct. That's what he wrote.

10 **Q.** And, now, to put the timing at all in context, you joined,
11 you tell us, in late September of '15. We are now August of
12 2016. And between now -- and between those times, you lost
13 some key people; correct?

14 **A.** We had some attrition during that time, sure.

15 **Q.** And we see here him writing, "Otto's quick exit with a
16 large dollar amount is having a strong impression, so we have
17 another wave of good people reconsidering their options."

18 Correct?

19 **A.** Correct.

20 **Q.** Then if we take a look on the top of the next page, what
21 we can see is talking about some recent departures.

22 And then what we see, toward the bottom of that paragraph,
23 is what I talked about in the opening statement, him talking
24 about all the exit -- plentiful exit opportunities out there.
25 Mr. Dolgov says, "I think we should be seriously concerned."

1 Do you see that, sir?

2 **A.** I'm looking for that reference.

3 **Q.** It is on the very last page of the email, sir, probably
4 bottom of the first full paragraph.

5 **A.** Got it.

6 **Q.** And that's what he says; correct?

7 **A.** Yeah. I can see that he wrote that, uh-huh.

8 **Q.** And were you seriously concerned as well?

9 **A.** I think, yeah, my job as the CEO is to always be concerned
10 about hiring great people and retaining our great people.

11 **Q.** And then, right below that, he says, "Uber has always been
12 pretty aggressive in recruiting."

13 And he goes on to say, with the advent of the Uber
14 acquiring Otto, he thinks the competition with Uber is going to
15 be more serious, the competition for talent.

16 Do you see that, sir?

17 **A.** I do.

18 **Q.** And that was your belief as well; fair?

19 **A.** It's reasonable, uh-huh.

20 **Q.** Okay. And if we kind of stop for a moment and talk about
21 where you are yourself as the new CEO here -- I mean, you were
22 CEO of Chauffeur then, correct, but it was still part of
23 Google?

24 **A.** Correct.

25 **Q.** But you're the top guy; right?

1 **A.** Uh-huh.

2 **Q.** And it seems to me like you're bleeding. We have here --
3 tell me if these names I got right of people who have left.

4 We know Anthony Levandowski. And I'm not going to talk
5 about the little people; I'm going to talk about the -- kind of
6 the heavyweights.

7 We have Anthony Levandowski; correct?

8 **A.** Correct.

9 **Q.** You've got Chris Urmson, who was your predecessor -- I
10 mean, heavyweight there, who we saw the email from in the
11 opening statement when he was sounding the alarm to Sergey Brin
12 and Larry Page -- he quit too; correct?

13 **A.** Correct.

14 **Q.** We have Jaijun, the founder of the whole software, he
15 walks out?

16 **A.** Jaijun was a senior software lead; yeah.

17 **Q.** Gone too?

18 **A.** Jaijun, yeah.

19 **Q.** Okay. We have Bryan Salesky who was the head of hardware.
20 He leaves too; correct?

21 **A.** Uh-huh.

22 **Q.** We have Russell Smith, one of the founders and a senior
23 engineer. He leaves too; correct?

24 **A.** Correct.

25 **Q.** You have Dave Ferguson, another senior engineer, leaving

1 too; correct?

2 **A.** Correct.

3 **Q.** And this all happens within the first nine months of you
4 coming in to take over; correct?

5 **A.** Roughly speaking, yeah.

6 **Q.** It put you in a pretty difficult situation it seems?

7 **A.** You know, you have to recognize the size of the team at
8 that time. There were hundreds and hundreds of us. So, yeah,
9 it makes sense that there would be some attrition.

10 **Q.** Well, let's take a look at 1255.

11 **MR. CARMODY:** Okay?

12 **MR. VERHOEVEN:** No objection, Your Honor.

13 **THE COURT:** Thank you. Received.

14 (Trial Exhibit 1255 received in evidence.)

15 **BY MR. CARMODY:**

16 **Q.** So we're taking a look at Exhibit 1255, which is a
17 one-page summary that you send out to the people who are the
18 board of directors for Waymo, and you think you swore that it
19 could have gone to the Alphabet board as well; correct?

20 **A.** Yes.

21 **Q.** Okay.

22 **A.** Yeah. Yes.

23 **Q.** So you're wanting to make sure, in your first year on the
24 job, when you're sending something out to all the big people,
25 you know, the directors of your company and of the parent

1 company, you want to get it right; correct?

2 **A.** Correct.

3 **Q.** Let's see what you say. You talk about some highlights,
4 but then below you reference lowlights and challenges.

5 And if we take a look from the very first word and kind of
6 highlight the next two sentences, what we can see is you're
7 talking about "Increasing hype and competitive intensity in the
8 self-driving car space has led to significant retention
9 challenges. We've lost key software, hardware, and operations
10 manufacturing supply chain talent at all levels."

11 Did I read that accurately?

12 **A.** You did.

13 **Q.** And was that an accurate statement of fact at the time you
14 wrote it?

15 **A.** Absolutely, yeah.

16 **Q.** Now, this is sent out in late 2016; correct?

17 **A.** Yes.

18 **Q.** This lawsuit that we're all here for today together was
19 filed in February 2017; correct?

20 **A.** Correct.

21 **Q.** And you understand that -- if -- and, by the way, just
22 shortly, not long after the lawsuit, a couple of months later,
23 you understand that Waymo teams up with Lyft; correct?

24 **A.** After the lawsuit was filed, yeah.

25 **Q.** And your parent company -- not yours, but Waymo's parent

1 company, Alphabet, makes a big billion-dollar investment in
2 Lyft; correct?

3 **A.** Very recently, yeah.

4 **Q.** And you know Lyft is the big competitor Uber has in the
5 ride-sharing space; fair?

6 **A.** In the U.S., correct.

7 **Q.** Okay. And, now, you understand the trial we're all here
8 for today involves eight -- what Waymo claims to be trade
9 secrets; correct?

10 **A.** Correct.

11 **Q.** And when you had your deposition taken that I read from
12 earlier in this case, you didn't know what the trade secrets
13 were; correct?

14 **A.** Not the specific details, yeah. I'm not a LiDAR engineer.

15 **Q.** That's fair. I mean, you're an engineer; right? But
16 you're not a LiDAR engineer. And I think your sworn testimony
17 was "I just know they relate to LiDAR." Is that fair?

18 **A.** That's correct.

19 **Q.** Okay. So you obviously didn't know any more about those
20 trade secrets then than you did before the filing of the suit;
21 correct?

22 **A.** Correct.

23 **Q.** Fair to say at the filing of the suit you're the CEO. And
24 while you knew your company was going to file a lawsuit against
25 Uber on eight -- what you claim to be trade secrets, you didn't

1 know what they were; correct?

2 **A.** At the time, there were more than eight.

3 **Q.** Okay. Let's be fair about it. You knew you were
4 asserting trade secrets; correct?

5 **A.** Correct.

6 **Q.** Okay. But you say you didn't know what they were;
7 correct?

8 **A.** I was relying on our expert LiDAR engineers and lawyers,
9 yes.

10 **Q.** But as CEO, you authorized the suit?

11 **A.** Correct.

12 **Q.** At the time you authorized the suit, you hadn't -- even
13 though you're a mechanical engineer, you didn't do any
14 scrubbing to try to understand what these kind of so-called
15 trade secrets were; correct?

16 **A.** I absolutely trusted my technical and legal team, for
17 sure.

18 **Q.** Now, Waymo, you have a lot of patents?

19 **A.** Yes.

20 **Q.** You believe you have a lot of trade secrets?

21 **A.** Certainly.

22 **Q.** You have a list of those patents; correct?

23 **A.** Me personally, or --

24 **Q.** I'm sorry, sir. Your company.

25 **A.** I would not -- yes.

Q. Okay. What I haven't found is, have you ever seen, before today, a list that your company keeps of all its claimed trade secrets?

A. Me personally?

Q. Yeah.

A. No.

Q. I mean, is there a list that engineers who work at Waymo and want to go somewhere else can go to Waymo's competitor but can look back and say, "My gosh, I just want to make sure, when I get to my competitor, I want to look at this list to say I better not go there"? There is no such list, is there?

A. I'm not aware of such list.

MR. CARMODY: I'll pass the witness, Your Honor.

THE COURT: All right.

Any redirect?

MR. VERHOEVEN: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. VERHOEVEN:

Q. Counsel mentioned several people that left, and discussed with you competition for talent.

I take it that there is significant competition in this field for talent?

A. For sure. I mean, we've been working in this space a long time. I think we've helped move the space along with all the miles that we've driven, all the technologies that we have

1 invented, and it has made for a very interesting space.

2 There's a lot of competition now.

3 **Q.** One of the individuals that Mr. Carmody listed was Chris
4 Urm- -- say it for me.

5 **A.** Chris Urmson, yes.

6 **Q.** Thank you.

7 What was his position before he left?

8 **A.** He was leading the technical side of the Chauffeur
9 self-driving car project.

10 **Q.** Where did he go?

11 **A.** He left and then started his own new company.

12 **Q.** Has Waymo filed a lawsuit against him for misappropriation
13 of trade secrets?

14 **MR. CARMODY:** Objection, Your Honor.

15 **THE COURT:** Was this one of the people that you
16 referenced earlier?

17 **MR. CARMODY:** Yeah. Definitely, yeah. But I'm
18 talking about "did you file a lawsuit against" him.

19 **THE COURT:** Well, overruled.

20 Answer the question.

21 **THE WITNESS:** No, we did not.

22 **BY MR. VERHOEVEN:**

23 **Q.** Jaijun was another one Mr. Carmody referenced. What was
24 his position, as best you know, at Waymo?

25 **A.** He was a senior software engineer with expertise in what

1 we call perception.

2 **Q.** And where did he go?

3 **A.** He started his own company called Neuro.

4 **Q.** Has Waymo filed any lawsuits or accused him of trade
5 secret misappropriation?

6 **A.** We have not.

7 **Q.** What about Brian Salesky, what was his position at Waymo?

8 **A.** Brian led the hardware team.

9 **Q.** And where did he go when he left?

10 **A.** He formed his own company called Argo AI.

11 **Q.** And has Waymo accused him of misappropriation of trade
12 secrets?

13 **A.** We have not.

14 **Q.** Filed a lawsuit?

15 **A.** No.

16 **Q.** Russell Smith was another name Mr. Carmody mentioned. He
17 left Waymo. Do you know where he went?

18 **A.** He might have gone to Neuro as well, but I'm not
19 absolutely positive.

20 **Q.** And was there any suit that Waymo filed or accusation they
21 made of trade secret misappropriation?

22 **A.** We did not.

23 **Q.** David Ferguson was another person Mr. Carmody mentioned.
24 Same question. Where did he go?

25 **A.** He cofounded Neuro with Jaijun.

1 **Q.** Okay. That's their own start-up company?

2 **A.** Correct.

3 **Q.** And did Waymo sue him or accuse him of trade secret
4 misappropriation?

5 **A.** We did not.

6 **Q.** If you could turn back to the exhibit that Mr. Carmody
7 showed you, Exhibit 1362.

8 **MR. VERHOEVEN:** Could we put that on the screen?

9 (Document displayed.)

10 **MR. VERHOEVEN:** And can we highlight the bottom
11 pullout paragraph before the D on the bottom of it.

12 **BY MR. VERHOEVEN:**

13 **Q.** And do you remember being shown the sentence, "But the
14 competition right now is pretty fierce, and there are several
15 companies (Tesla, Apple, Uber, Toyota, et cetera) that are
16 stalking our folks, and they seem very willing to burn a lot of
17 cash to try to catch up to us."

18 Do you see that?

19 **A.** I see that.

20 **Q.** Did you file a lawsuit against Apple for trade secret
21 misappropriation?

22 **A.** No, we did not.

23 **Q.** What about Tesla? Did you accuse them of misappropriating
24 your trade secrets?

25 **A.** No.

Q. What about Toyota?

A. **No.**

Q. Why did you sue Uber for misappropriation of trade secrets?

A. Because we had evidence and information that indicated that's what they had done.

MR. VERHOEVEN: Thank you. I'll pass the witness.

MR. CARMODY: I have, I think, three questions, Your Honor.

THE COURT: Go ahead.

RECROSS - EXAMINATION

BY MR. CARMODY:

Q. Sir, you talked about a half dozen folks that left and they started their new companies?

A. Yes.

Q. You have no clue what the specifics of their technology is at those new companies; correct?

A. We know generally the space of these competitors, sure.

Q. Sir, my question was, do you, John Krafcik, know the specific technology these other companies are using?

A. Me specifically? No.

Q. Okay. None of these people went to Uber; correct?

A. **Correct.**

Q. And, finally, sir, of all those companies, none of them is situated like Uber, where they're directly competing with Waymo.

1 to do self-driving cars in the ride-sharing business; correct?

2 **A.** Not necessarily. We don't know which way those companies
3 could go. They could certainly enable a ride-sharing service.

4 **Q.** Sir, as we sit here today -- and you're under oath -- are
5 any of those other companies competing like Uber is directly
6 against Waymo with self-driving cars in the ride-sharing space?

7 **A.** I can say you're correct. They are not in the
8 ride-sharing space today.

9 **MR. CARMODY:** Thank you, sir.

10 **THE COURT:** May --

11 **MR. VERHOEVEN:** Couple of questions?

12 **THE COURT:** Really?

13 **MR. VERHOEVEN:** Two questions.

14 **THE COURT:** Then he'll want two questions.

15 (Laughter)

16 **THE COURT:** Go ahead.

17 **REDIRECT EXAMINATION**

18 **BY MR. VERHOEVEN:**

19 **Q.** Is Tesla a competitor for driverless cars?

20 **A.** Not necessarily full driverless cars, but they have
21 driverless technology.

22 **Q.** What about Apple? Are they trying to develop this
23 technology?

24 **A.** They are working on it.

25 **Q.** What about Toyota?

1 **A.** Certainly.

2 **MR. CARMODY:** One question.

3 **THE COURT:** Go ahead.

4 CROSS-EXAMINATION

5 **BY MR. VERHOEVEN:**

6 **Q.** You talked earlier about how important LiDAR is; correct?

7 **A.** Correct.

8 **Q.** Elon Musk doesn't use LiDAR at Tesla, does he?

9 **A.** He does disagree on this point.

10 **Q.** He doesn't use LiDAR at Tesla; correct?

11 **A.** Not yet.

12 (Laughter)

13 **MR. CARMODY:** Thank you.

14 **THE COURT:** All right. Now, I need to keep the
15 witness. Can he be excused, is what I'm asking? But since I
16 said I would take up out of the presence of the jury the
17 conversation that you wanted to get into evidence, if you are
18 giving up on that or don't need it or whatever, then we can let
19 the witness go. But, otherwise, I've got to keep him here
20 while we excuse the jury.

21 **MR. CARMODY:** We agree, Your Honor, he can be excused.

22 **MR. VERHOEVEN:** The witness may be excused. We've
23 reached agreement, Your Honor.

24 **THE COURT:** All right. You reached agreement?

25 **MR. VERHOEVEN:** We avoided the issue.

1 **THE COURT:** Sir, you're free to go. You're
2 discharged. You don't need to respond to any other subpoenas.
3 Have a great day.

4 **THE WITNESS:** Thank you.

5 (Witness excused.)

6 **THE COURT:** All right. So we have ten minutes before
7 the magic hour of 1:00. Do we have another witness ready to
8 go? Can you make good use of the time?

9 **MR. JAFFE:** Yes, Your Honor. But before we call --
10 our next witness is Dmitri Dolgov. Some of his testimony is
11 going to go into the substance of the trade secrets, and I
12 wanted to ask Your Honor's guidance on whether to do an open
13 session, then an open cross-examination, followed by --

14 **THE COURT:** We have 10 minutes, and we're going to do
15 it all public. So you all figure it out. Whenever you run out
16 of public questions, the other side gets to ask public
17 questions.

18 **MR. JAFFE:** Thank you, Your Honor.

19 **THE COURT:** All right.

20 **THE CLERK:** Will the witness approach the witness
21 stand.

22 **THE COURT:** Please raise your right hand.

23 DMITRI DOLGOV,

24 called as a witness for the Plaintiff, having been duly sworn,
25 testified as follows:

1 **THE COURT:** Okay. Welcome. Have a seat.

2 **THE CLERK:** State your name for the court, and spell
3 your last name for the record, please.

4 **THE WITNESS:** Dmitri Dolgov. Last name is
5 D-O-L-G-O-V.

6 **THE COURT:** Everybody over there hear okay?

7 All right. Be sure you speak so this thing catches your
8 voice. That will be good.

9 Counsel, go ahead.

10 **MR. JAFFE:** Thank you, Your Honor.

11 **DIRECT EXAMINATION**

12 **BY MR. JAFFE:**

13 **Q.** Good afternoon. Can you please introduce yourself to the
14 jury.

15 **A.** Good afternoon. My name is Dmitri Dolgov.

16 **Q.** Where do you live?

17 **A.** I live in Palo Alto.

18 **Q.** Do you have a family?

19 **A.** I do. My wife and I have two young kids. I have a boy
20 who is four and a half and a daughter who is about a year old.

21 **Q.** Are you employed?

22 **A.** I am.

23 **Q.** Where?

24 **A.** Waymo.

25 **Q.** How long have you worked at Waymo?

1 **A.** Since the company was created in early 2017.

2 **Q.** Where did you work before that?

3 **A.** Before that, I worked at Google.

4 **Q.** Is there a relationship between your work at Google and
5 your work now at Waymo?

6 **A.** Yes, there is. The project that I worked on at Google
7 later became Waymo.

8 **Q.** What is your position at Waymo?

9 **A.** I am the VP of engineering.

10 **Q.** And can you give us a sense of what the VP of engineering
11 at Waymo does?

12 **A.** Yeah. I am responsible for the self-driving technology,
13 the hardware and software parts of it.

14 **Q.** How many people report to you as the vice president of
15 engineering?

16 **A.** About 430.

17 **Q.** Let's talk a little bit about your background. Did you go
18 to college?

19 **A.** I did.

20 **Q.** Where did you go to college?

21 **A.** My first degree I got in Moscow from the Moscow Institute
22 of Physics and Technology.

23 **Q.** Did you receive --

24 **THE COURT:** You need to speak more into the
25 microphone. You're fading out.

1 **THE WITNESS:** Okay.

2 **BY MR. JAFFE:**

3 **Q.** Did you receive any advanced degrees after that?

4 **A.** I did. I also got a master's in applied physics and math,
5 also from the Moscow Institute of Physics and Technology. Then
6 I got a master's and a Ph.D. in computer science from the
7 University of Michigan.

8 **Q.** What did you do after receiving your Ph.D.?

9 **A.** I was a researcher for Toyota Research Institute.

10 **Q.** What did you work on as a researcher at Toyota?

11 **A.** I continued my work on the AI specifically, an area that
12 we call motion planning, specifically as it applies to
13 self-driving vehicles.

14 **Q.** You mentioned motion planning. What does that mean?

15 **A.** It's an area of AI and robotics where, basically, you
16 know, in this case, self-driving cars can figure out how
17 they're going to move through space. Where are they going to
18 go and how fast are they going to move.

19 **Q.** You said AI. What does that stand for?

20 **A.** Artificial intelligence.

21 **Q.** Were you working on any specific projects at the Toyota
22 Research Institute?

23 **A.** I was. I worked through a collaboration with Stanford
24 University on the DARPA Urban Challenge Competition.

25 **Q.** We got another acronym here. Can you explain what DARPA

1 is, please.

2 **A.** DARPA is a federal agency that funds a lot of research in
3 basic science and engineering.

4 **Q.** Okay. So we know what DARPA is. What is the DARPA Urban
5 Challenge?

6 **A.** DARPA Urban Challenge was one of the competitions they
7 organized. It was the third one they organized in self-driving
8 vehicles. Specifically, the Urban Challenge was run on kind of
9 a mock city. They took an abandoned air base and they created
10 kind of a mock town there. And they had a bunch of
11 self-driving vehicles and regular cars that had to navigate
12 through that space.

13 **Q.** What was your involvement in that challenge or
14 competition?

15 **A.** I was part of Stanford's team. I was one of the software
16 engineers. And I worked on motion planning, as we discussed,
17 specifically helping our cars navigate through parking lots.

18 **Q.** After this DARPA Urban Challenge, what did you do next?

19 **A.** After that, I joined Google.

20 **Q.** How did you come to be employed at Google?

21 **A.** Sebastian Thrun, who was the lead for the Stanford team
22 and the professor with whom I collaborated, invited me to join.

23 **Q.** When you joined Google, what kind of technology were you
24 working on there?

25 **A.** So we were continuing to work on self-driving cars and

1 taking the next step from that basic research.

2 **Q.** Did the project come to have a name that you were working
3 on?

4 **A.** Yeah, we called it Project Chauffeur.

5 **Q.** How many people were on Project Chauffeur at the
6 beginning?

7 **A.** The first year, it was about a dozen.

8 **Q.** Was the Google project, Project Chauffeur, was that
9 different from the prior work that you were doing in academia?

10 **A.** Well, it was an evolution of that area of research. You
11 know, the whole goal of creating the project was to take that
12 urban research and take the next step and bring closer to
13 product and get the technology to drive on public roads.

14 **Q.** At that time, in 2009, were there many companies
15 developing self-driving cars to go on public roads?

16 **A.** In those early days, I don't think there were any
17 companies who were driving on public roads.

18 **Q.** We have a couple of minutes. We'll see if we can try and
19 get through some of this.

20 We heard from Mr. Krafcik about Waymo's technology. I
21 want to talk about it in a little bit more detail.

22 Dr. Dolgov, can you explain how Waymo's self-driving
23 technology works? In other words, what is a self-driving car?

24 **A.** Well, it -- basically, building a self-driving car
25 involves building the hardware and the software to equip the

1 vehicle with the sort of reasoning and perception and
2 decision-making that all of us do when we drive our cars on
3 real roads and helping them develop the technology to deal with
4 all the complexity.

5 **Q.** Do you have some slides to help explain this?

6 **A.** Yes.

7 **MR. JAFFE:** If we can put up WDX3-1, please.

8 (Document displayed.)

9 **BY MR. JAFFE:**

10 **Q.** Dr. Dolgov, can you explain what we're looking at here on
11 this slide?

12 **A.** This is a slide at a high level that describes the four
13 main things that a self-driving car has to do to achieve this
14 task. And it's basically similar to what a human would do.
15 You have to ask these four steps:

16 Where am I? You have to see and understand what's around
17 you. You have to predict and anticipate what will happen next.
18 And, finally, you have to take that information into account
19 and figure out what you yourself are going to do in this
20 environment.

21 **Q.** Let's see how many we can get through here.

22 If we can pull up WDX3-2, please, Mr. Fisher.

23 All right. Dr. Dolgov, can you explain how Waymo's
24 self-driving car technology answers the first question of,
25 Where am I?

1 **A.** Our cars use maps, and that's what you see in this
2 picture. The car in the middle, the white one, is showing the
3 position of our vehicle. And as it's driving around, it is
4 taking the data from the sensors, and it aligns it to the map
5 we've prebuilt. And as we align one to the other, our cars are
6 able to position -- rather, figure out their position with
7 respect to the map.

8 **MR. JAFFE:** Let's go to the next slide.

9 **BY MR. JAFFE:**

10 **Q.** How does Waymo's self-driving car technology answer this
11 second question of, What's around me?

12 **A.** So, once again, we use the sensors that our cars have
13 onboard. And they find relevant objects in the environment
14 around them. And this is what you are seeing here on the
15 slide, where every object is shown with different colors. And
16 there are a few cars here, some pedestrians, and I think a
17 cyclist or two.

18 **Q.** All right. Next slide, if we can look at that.

19 How does Waymo's self-driving car technology answer
20 question number 3, What will happen next?

21 **A.** Right. Like a human, experience is what matters. And so
22 you get better -- as you drive, you get better at predicting
23 and anticipating what other people are going to do.

24 So this is what our cars do as well. They learn how
25 people interact with one another. They understand how other

1 people affect our actions, and vice versa.

2 And what we're seeing on this picture is, for every
3 object, we drew a line or curve that shows the future possible
4 path for that object.

5 **Q.** All right. Let's look at the last question, question
6 number 4. How does Waymo's self-driving car technology answer
7 this last question, What should I do?

8 **A.** The cars take all the information that we just discussed,
9 their position, the things around them, the predicted futures,
10 and you combine that with their understanding of the rules of
11 driving and you can't go through red lights or you need to stop
12 at a stop sign, as well as an understanding of the social
13 aspect of driving.

14 And then, based on that, they figure out where they want
15 to go, and they actuate the car to execute those maneuvers.

16 **MR. JAFFE:** Thank you, Dr. Dolgov.

17 Now is probably a good time to break.

18 **THE COURT:** Okay. Very well. That's what we'll do.

19 To the jury, we're finished with our first day.
20 Congratulations to you, and thank you for your attention. And
21 I ask you to be back here at 7:45 in the morning again. And we
22 will resume, I guess, with this witness --

23 **MR. JAFFE:** Right.

24 **THE COURT:** -- no later than 8:00 a.m.

25 So please remember the admonition. No speaking with

1 anyone about the case. Don't do any research about the case.
2 Don't read any papers. No -- no nothing. You know what I
3 mean. Please honor what I've said on that.

4 Have a good evening. We'll see you back here tomorrow.

5 Thank you.

6 **THE CLERK:** All rise for the jury.

7 (Jury out at 1:02 p.m.)

8 **THE COURT:** All right. Be seated. The witness may
9 step down. The witness can go back out in the hallway. I want
10 to do some business with the lawyers. I'll see you here at
11 7:30 in the morning.

12 All right. Counsel, do you have any issues for me to take
13 up, or are we in recess for the day?

14 **MR. BRILLE:** Your Honor, just one very quick issue.

15 The document issue went very smoothly today. We've been
16 meeting quite regularly on documents and hope to work
17 everything out in advance.

18 But as we move through the witnesses, I think we're going
19 to start seeing some documents that are more controversial;
20 namely, the documents related to the Stroz investigation. We
21 probably are going to have some pretty significant
22 disagreements on those.

23 And I was wondering whether or not the Court would find it
24 useful for us to submit a short brief with those documents so
25 we can point out to the Court sort of what the real issues are

1 and allow them to make arguments with respect to admissibility
2 on these issues.

3 **THE COURT:** Give me an example.

4 **MR. BRILLE:** So, for example, the Anthony Levandowski
5 interview memorandum. We have lodged objections. The document
6 itself is hearsay. It contains hearsay within hearsay. It's
7 embedded hearsay throughout the document. We pointed that out.

8 And they've come back to us and said they want to offer it
9 for its truth. And we don't think that they should be able to
10 do that. We think there are numerous issues with that. The
11 Stroz report itself has similar issues. And I think these are
12 complicated issues.

13 So what we propose is that we submit a very short filing
14 with you so you can see the documents. You can have the
15 statements in front of you. We can isolate them for you and
16 you can make --

17 **THE COURT:** When you say "short," what do you mean?

18 **MR. BRILLE:** I'm proposing a document no more than
19 five pages.

20 **THE COURT:** How many exhibits?

21 **MR. BRILLE:** I believe we have -- let me just --

22 **MR. EISEMAN:** I think it's seven exhibits, Your Honor.

23 **MR. BRILLE:** I think it's seven so far of the ones
24 that have been identified.

25 **THE COURT:** Well, all right. Let me ask the other

1 side.

2 Mr. Eiseman, how many of these actually made their way to
3 Uber?

4 **MR. EISEMAN:** These are the Stroz report, the report
5 and all the exhibits -- or some of the exhibits to the report.
6 So they all made it to them. They all made it -- their way to
7 them.

8 **THE COURT:** Who at Uber saw them?

9 **MR. EISEMAN:** Well, various people in the legal
10 department and other executives at some point in time.

11 **THE COURT:** But before the deal was done, how many saw
12 them?

13 **MR. EISEMAN:** I think it was the members of the legal
14 department.

15 **MR. BRILLE:** I think, actually, also -- Your Honor, it
16 also depends on the document. Some people saw some documents
17 at different times. They were restricted to certain people.

18 And, you know, our biggest issue is that they're offering
19 them for the truth. And we are saying that they suffer from
20 irreparable hearsay issues, both in terms of the document
21 themselves and the embedded hearsay.

22 **MR. EISEMAN:** Your Honor, we think a brief may make
23 sense. We think we'll be able to lay out a whole series of
24 exceptions to the hearsay rule, because the report was prepared
25 by Stroz, which was an agent of both Uber and Ottomotto, and

1 then to various employees who were interviewed.

2 **THE COURT:** All right. All right. You can do this --
3 when do you want to submit it to me?

4 **MR. BRILLE:** I could get ours in by the end of the
5 day, if you would like. Just the pace of the -- with the pace
6 of witnesses, I'm not sure it's going to come up tomorrow. I'm
7 certainly not trying to jam them in terms of time.

8 **MR. EISEMAN:** If we could get it in by tomorrow
9 morning, Your Honor, that would be helpful.

10 **THE COURT:** Right. How about 6:00 a.m. tomorrow
11 morning?

12 **MR. EISEMAN:** Thank you, Your Honor.

13 **MR. BRILLE:** Thank you, Your Honor.

14 **THE COURT:** You lawyers don't sleep anyway; right?

15 **MR. BRILLE:** We don't.

16 **THE COURT:** I have no sympathy. I used to do it too.
17 So this is why you get paid a thousand dollars an hour, is to
18 stay up all night.

19 Okay. Good. We have a plan.

20 What else can I help you with?

21 **MR. BRILLE:** Thank you, Your Honor.

22 **MR. EISEMAN:** I think that's all from our side, Your
23 Honor.

24 **MR. VERHOEVEN:** That's it.

25 **THE COURT:** All right. So I -- I would like to ask,

1 if you both agree, for the two lawyers I spoke with at the
2 sidebar this morning to come see me in chambers for just a
3 moment, unless that is all moot.

4 **MR. VERHOEVEN:** We would be happy to. Could we have a
5 short break, before we do that, to inform ourselves?

6 **THE COURT:** Yes. Okay.

7 **MR. VERHOEVEN:** Five minutes?

8 **THE COURT:** Five minutes will be fine. My law clerk
9 or my deputy will escort you in in five minutes.

10 Are we done for today?

11 **MR. VERHOEVEN:** Yes, Your Honor.

12 **THE COURT:** All right. See you all at 7:30 in the
13 morning. Thank you.

14 (Whereupon at 1:07 p.m. further proceedings
15 were adjourned until Tuesday, February 6, 2018
16 at 7:30 a.m.)

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1898		342	2
1362		348	2
1907		352	2
1131		354	2
1648		354	2
1255		358	2
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CERTIFICATE OF REPORTER

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Debra L. Pas

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Katherine Sullivan

Katherine Sullivan, CSR 5812, CRR, RMR

Monday, February 5, 2018